

No. 15094

United States
Court of Appeals
for the Ninth Circuit

MILTON GRADY RAMSEY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division.

FILED

AUG 29 1956

PAUL P. O'BRIEN, CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Affidavit for and Order Thereon for Enlarge- ment of Time to Docket Record	26
Order on	27
Attorneys, Names and Addresses of	1
Certificate by Clerk	235
Designation of Points on Appeal	237
Indictment	3
Judgment and Commitment	22
Minutes of the Court:	
October 31, 1955—Arraignment and Plea . . .	6
December 20, 1955—Hearing on Motion to Suppress Evidence, Etc.	9
December 21, 1955—Proceedings of Trial . . .	11
December 22, 1955—Proceedings of Trial . . .	13
January 16, 1956—Re Bond of Defendant . . .	21
Motion for Judgment of Acquittal, or in the Alternate for a New Trial	16
Motion to Suppress Evidence and Dismiss Case	6
Notice of Appeal	23
Praecipe Designating Record on Appeal	25
Transcript of Proceedings	28

Witnesses, Defendant's:

Drew, Edward F.

—direct 230

—cross 231

Linder, John J.

—direct 229

Reeves, Marvin W.

—direct 225

—cross 227

Witnesses, Plaintiff's:

Awrey, Bruce B.

—direct 40, 174

—cross 59, 176

—redirect 71

Bumpass, Howard C.

—direct 98

Coughran, James H.

—direct 72

—cross 84

—redirect 96

—recross 97

Crane, George D.

—direct 130

—cross 139

—redirect 147

—recross 149

INDEX

PAGE

Witnesses, Plaintiff's—(Continued):

Jones, Charles O.

—direct	151
—cross	164
—redirect	173

Linder, John J.

—direct	199
—cross	207
—redirect	216
—recross	217

Travis, Elroy W.

—direct	188
—cross	194
—redirect	198
—recross	199

Warner, M. F.

—direct	104, 119, 179
—cross	121, 180
—redirect	128
—recross	129

Verdict	15
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NAMES AND ADDRESSES OF ATTORNEYS

Attorney for Appellant:

MORRIS LAVINE,
619-620 A. G. Bartlett Bldg.,
215 West Seventh Street,
Los Angeles 14, California.

Attorneys for Appellee:

LAUGHLIN E. WATERS,
U. S. Attorney ;

LOUIS L. ABBOTT,
Asst. U. S. Attorney, Chief, Criminal
Division ;

JOSEPH F. BENDER,
Asst. U. S. Attorney,
600 Federal Building,
Los Angeles 12, California.

In the United States District Court in and for the
Southern District of California, Central Division

September, 1955, Grand Jury

No. 24515

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MILTON GRADY RAMSEY,

Defendant.

INDICTMENT

[U.S.C., Title 26, Secs. 5601, 5606, 5603, 5691, 5642
and 5632, Liquor Tax Evasion.]

The grand jury charges:

Count One

[U.S.C., Title 26, Sec. 5601]

On or about September 15, 1955, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant Milton Grady Ramsey did have in his possession and custody and under his control a still and distilling apparatus, namely: a 100-gallon copper pot type still, which was not registered as required by United States Code, Title 26, Section 5174(a). [2*]

*Page numbering appearing at foot of page of original Certified Transcript of Record.

Count Two

[U.S.C., Title 26, Sec. 5606]

On or about September 15, 1955, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant Milton Grady Ramsey did carry on the business of a distiller without having given bond as required by United States Code, Title 26, Section 5176(a), and did engage in, and carry on, the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him. [3]

Count Three

[U.S.C., Title 26, Sec. 5603]

On or about September 15, 1955, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant Milton Grady Ramsey did engage in, and intend to be engaged in, the business of a distiller and rectifier and did fail and refuse to give the notice thereof required by United States Code, Title 26, Sections 5175(a) and 5271(a). [4]

Count Four

[U.S.C., Title 26, Sec. 5691]

On or about September 15, 1955, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant Milton Grady Ramsey did carry on the business of a rectifier and did wilfully fail to pay the special tax required by United States Code, Title 26, Section 5081. [5]

Count Five

[U.S.C., Title 26, Sec. 5642]

On or about September 15, 1955, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant Milton Grady Ramsey did possess distilled spirits, namely: approximately 40 gallons of distilled spirits, the immediate containers of which did not have affixed thereto a stamp denoting the quantity of distilled spirits contained therein and evidencing payment of all internal revenue taxes imposed on such spirits, in violation of United States Code, Title 26, Section 5008(b)(1)[6].

Count Six

[U.S.C., Title 26, Sec. 5632]

On or about September 15, 1955, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant Milton Grady Ramsey did remove approximately 40 gallons of distilled spirits, on which the tax required by law was not determined and paid, to a place other than the internal revenue bonded warehouse provided by law and did conceal said removed spirits.

A True Bill,

/s/ ORVILLE J. HARRELL,
Foreman.

/s/ LAUGHLIN E. WATERS,
United States Attorney.

[Endorsed]: Filed October 19, 1955. [7]

[Title of District Court and Cause.]

MINUTES OF THE COURT

OCTOBER 31, 1955

Present: The Hon. Harry C. Westover, District Judge.

Ass't. U. S. Att'y.: Volney V. Brown, Jr.

Counsel for Defendant: Morris Lavine.

Defendant is present on bond.

Proceedings:

For arraignment and plea.

Defendant is arraigned and pleads not guilty as charged in all 6 counts of Indictment.

It Is Ordered that this cause is set for trial Dec. 20, 1955, 10 a.m.

JOHN A. CHILDRESS,
Clerk. [8]

[Title of District Court and Cause.]

MOTION TO SUPPRESS EVIDENCE AND DISMISS CASE

Comes now Milton Grady Ramsey and moves to dismiss the indictment and suppress the evidence on the ground that it was based upon evidence illegally searched and seized in violation of the Fourth and Fifth Amendments to the Constitution of the

United States and Rule 41, Rules of Criminal Procedure for the District Courts of the United States in this, viz.:

A search warrant was obtained on September 15, 1955, to search the premises at 1011 and 1011½ 223 street, Torrance, California, for "tax unpaid distilled spirits" which are illegal to possess under 26 U.S.C.A. 5008 (b) (1). This was the only ground given for search.

The officers nevertheless seized and destroyed other articles, set forth in their return and upon which it is obvious that the indictment is based, and for which there was no search warrant.

This motion will be based upon the records and files of this case, the search warrant and return, and Commissioner's Docket No. 17, Case 477, and any testimony, and affidavits to be produced, and will be made before the Honorable Harry Westover, U. S. District Judge, in his courtroom in the Federal Building on December 20, at 10 a.m. or as soon thereafter as said motion can be heard and determined.

/s/ MORRIS LAVINE,

Attorney for Milton Grady
Ramsey. [9]

Points and Authorities

The Fourth and Fifth Amendments U. S. Constitution.

“* * * No warrant shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.”

The section must be liberally construed to safeguard the right of privacy. *Byars v. U. S.* 273, U. S. 28. Its protection extends to offenders as well as the law abiding. *Weeks v. U. S.* 232, U. S. 383; *Agnello v. U. S.* 269, U. S. 20.32. U. S. v. *Lefkowitz* 285, U. S. 452.

Evidence received in violation of or beyond a search warrant is improperly received. U. S. v. *Lee* 83 F(2) 195.

The property to be seized must be identified in the search warrant. Rule 41 (c) Federal Rules of Criminal Procedure.

Secondary Evidence of evidence illegally obtained as primary evidence or by an illegal search is not admissible. *Silverthorne Lumber Co. v. U. S.* 251, U. S. 385. The destruction or return of the primary evidence would not permit testimony regarding the same. *Silverthorne Lumber Co. v. U. S.* 251, U. S. 385.

/s/ MORRIS LAVINE.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 20, 1955. [10]

[Title of District Court and Cause.]

MINUTES OF THE COURT

DECEMBER 20, 1955

Present: The Honorable Harry C. Westover, District Judge.

Asst. U. S. Attorney: Jos. F. Bender.

Counsel for Defendant: Morris Lavine.

Defendant is present on bond.

Proceedings:

For hearing motion to suppress evidence and to dismiss. For trial. Court orders a jury impaneled.

The following jurors, duly impaneled, are sworn to try this cause:

1. Glenn A. Davidson;
2. Florence A. Hanger;
3. Chas. R. Treulich;
4. Aranka Rubin;
5. Florence R. Siman;
6. Chas. H. Mattern;
7. Jacqueline L. Haslett;
8. Grover C. Starling;
9. Jos. C. Caicedo;
10. Stephen Zewatch;
11. Dorothy Kammerman;
12. S. King Lanham.

It is stipulated between counsel that if one juror becomes incapacitated, the trial may proceed with eleven jurors.

Court admonishes the jury not to discuss this cause and declares a recess to 1:30 p.m. In the absence of the jury counsel on behalf of defendant and Gov't stipulate as to search warrant serve on defendant. Counsel for defendant argues in support of motion to suppress evidence and dismiss the case. Counsel for Gov't argues in opposition. Court Orders cause as to said motion stand submitted. At 11:55 a.m. court recesses to 1:30 p.m.

At 1:35 p.m. court reconvenes herein. All parties are present, and the jury and defendant are present. Court orders trial proceed.

Counsel for defendant objects to any evidence on count one of the Indictment, and states the reasons. Gov't counsel states that it does not intend to offer any evidence on count one.

Counsel on behalf of defendant moves to have all witnesses excused from the courtroom, except when testifying. Court denies said motion.

Bruce B. Awrey and James H. Coughran, respectively, are called, sworn, and testify for Gov't. Gov't Exs. 1 and 2 are marked for ident.

Howard C. Bumpass and M. F. Warner, respectively, are called, sworn, and testify for Gov't.

Court admonishes the jury not to discuss this cause.

It Is Ordered that cause is continued to Dec. 21, 1955, 10 a.m., for further jury trial.

EDMUND L. SMITH,
Clerk. [12]

[Title of District Court and Cause.]

MINUTES OF THE COURT

DECEMBER 21, 1955

Present: Hon. Harry C. Westover, District Judge.

Counsel for Gov't: Joseph F. Bender,
Ass't. U. S. Att'y.;

Counsel for Def't: Morris Lavine.

Defendant present (on bond).

Proceedings:

For further jury trial. Jury is present. Court orders trial proceed.

M. F. Warner, Gov't witness, heretofore sworn, is recalled.

Gov't Exs. 3 to 17, incl., are admitted in evidence.

George D. Crane is called, sworn, and testifies for Gov't.

Gov't Exs. 18 and 19 are admitted in evidence.

At 11 a.m. Court admonishes the jury not to discuss this cause and declares a recess. At 11:55 a.m. court reconvenes herein, and all parties are present as before, and the jury is present. Trial proceeds.

George D. Crane resumes the stand.

Charles O. Jones is called, sworn, and testifies for Gov't.

Def't's Ex. A is admitted in evidence.

Bruce B. Awrey and M. F. Warner, respectively, Gov't witnesses, heretofore sworn, are recalled.

Gov't Exs. 1 and 2, heretofore marked for ident., are admitted in evidence.

At noon Court reminds the jury of the admonition heretofore given and declares a recess to 2 p.m. At 2 p.m. court reconvenes herein, and all parties are present as before, and the jury is present. Trial proceeds.

Elroy W. Travis and John J. Linder, respectively, are called, sworn, and testify for Gov't.

At 3 p.m. Court reminds the jury of the admonition heretofore given and excuses the jury. In the absence of the jury, Court and Gov't counsel discuss certain counts in the Indictment. Counsel for defendant makes a statement.

Counsel on behalf of defendant moves for judgment of acquittal as to each of the counts in the Indictment and states reasons. Court grants said motion as to count one of the Indictment, and orders motion as to counts 2, 3, 4, 5 and 6 taken under submission.

Counsel for defendant further moves to strike from evidence all exhibits, and states reasons. Court orders said motion denied.

At 3:05 p.m. Court declares a recess. At 3:20 p.m. court reconvenes herein, and all parties are present as before, and jury and defendant are present. Trial proceeds.

Gov't rests. Marvin W. Reeves and Edward F. Drew, respectively, are called, sworn, and testify for defendant. Defendant rests. Both sides rest.

Counsel approach the bench out of hearing of the jury, and

Counsel on behalf of defendant renews motion for judgment of acquittal as to counts 2, 3, 4, 5 and 6. Court orders said motion denied.

Gov't counsel argues to the jury.

At 4 p.m. Court admonishes the jury not to discuss this cause and excuses the jury until Dec. 22, 1955, 10 a.m.

In the absence of the jury, Court and counsel discuss proposed instructions. Counsel for defendant objects to certain of Gov't instructions. Counsel for Gov't has no objections to proposed instructions.

At 4:10 p.m. It Is Ordered that cause is continued to Dec. 22, 1955, 10 a.m., for further jury trial.

JOHN A. CHILDRESS,
Clerk. [13]

[Title of District Court and Cause.]

MINUTES OF THE COURT

DECEMBER 22, 1955

Present: Hon. Harry C. Westover, District Judge.

Ass't U. S. Att'y Jos. F. Bender.

Counsel for Defendant Morris Lavine.

Defendant present (on bond).

Proceedings:

For further jury trial. Jury is present. Court orders trial proceed.

Counsel for defendant argues to the jury. Counsel

for Gov't argues further to the jury. Court Instructs the jury on the law of this case.

At 11 a.m., L. C. Murphy, Crier, is sworn as an officer to take charge of the jury during its deliberation upon a verdict, and the jury retires to deliberate upon its verdict.

Counsel for defendant objects to certain instructions.

It is stipulated between counsel, and so ordered by the Court, that the jury may have Exhibits 3 through 17, and Exhibits A, B and C.

At 11:10 a.m. the jury is given the said exhibits and the Indictment.

At 12:30 p.m. pursuant to the Court's order, the jury is taken to lunch in charge of said officer.

At 2 p.m. the jury returns to the jury room and resumes deliberation upon its verdict.

At 3:25 p.m. the jury returns into court, and all parties being present as before, the Court inquires of the jury if they have arrived at a verdict and the foreman of the jury states they have not and inquires as to certain count in the Indictment. Court instructs the jury further.

At 3:30 p.m. the jury retires to the jury room for further deliberation.

At 3:45 p.m. the jury returns into court, and all parties being present as before, and the jury being present.

In response to the Court's inquiry, the foreman of the jury states the jury has arrived at a verdict, and the jury presents its verdict finding defendant guilty as charged in counts 2, 3, 4 and 5, and not

guilty as charged in count 6 of the Indictment. The jury is polled and each juror answers that the verdict as read is his own verdict. Said verdict is read in open court and order filed and entered, to wit: (See Verdict Following:)

Court Orders cause referred to Probation Officer for investigation and report and continued to Jan. 16, 1956, 2 p.m., for sentence on counts 2, 3, 4 and 5, defendant to remain on bond, pending sentence.

Court orders the jury discharged and excused until notified.

JOHN A. CHILDRESS,
Clerk. [14]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the above-entitled cause, find the defendant, Milton Grady Ramsey:

Guilty as charged in Count 2 of the Indictment;
Guilty as charged in Count 3 of the Indictment;
Guilty as charged in Count 4 of the Indictment;
Guilty as charged in Count 5 of the Indictment,
and

Not Guilty as charged in Count 6 of the Indictment.

Dated: Los Angeles, California, December 22, 1955.

/s/ GROVER C. STARLING,
Foreman of the Jury.

[Endorsed]: Filed December 22, 1955. [15]

[Title of District Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL
OR IN THE ALTERNATIVE FOR A NEW
TRIAL

Comes Now Milton Grady Ramsey and moves this Honorable Court for a Judgment of Acquittal or in the alternate for a New Trial as to Counts II, III, IV and V of the Indictment, upon the following grounds, to wit:

1. The evidence is insufficient to support the verdict that, on or about September 15, 1955, the defendant Milton Grady Ramsey did carry on the business of a distiller, as set out in Count II; and the defendant moves for a judgment of acquittal or, in the alternate, for a new trial on the ground of the insufficiency of the evidence to establish that, on or about September 15, 1955, in the County of Los Angeles, the defendant Milton Grady Ramsey did engage in and did intend to engage in the business of a distiller and rectifier and did fail and refuse to give notice thereof as required by United States Code, as set out in Count III; and the defendant moves for a judgment of acquittal or, in the alternate, for a new trial on Count IV on the grounds of the insufficiency of the evidence to establish that, on or about September 15, 1955, the defendant Milton Grady Ramsey did carry on the business of a rectifier and did wilfully fail to pay the special tax required by United States Code. The defendant Moves for a judgment of [16] acquittal or, in the alternate, a new trial on the grounds of the in-

sufficiency of the evidence on Count V to establish that, on or about September 15, 1955, the defendant Milton Grady Ramsey did possess distilled spirits, namely: approximately 40 gallons of distilled spirits, the immediate containers of which did not have affixed thereto a stamp denoting the quantity of distilled spirits contained therein as set forth in said count.

2. The defendant also moves for a judgment of acquittal or, in the alternate, a new trial on each of the following grounds:

(a) The evidence secured by illegal search and seizure in violation of the Fourth and Fifth Amendment to the Constitution of the United States was used in evidence to convict him;

(b) That the verdicts are contrary to the law and the facts;

(c) That the court erred in rulings on admissions and exclusions of evidence in the trial of the case;

(d) The court erred in rulings throughout the trial of the case;

(e) That the procedure and proceedings had in the trial of the case were erroneous.

(f) That the court erred in the instructions given and refused.

Said Motion is based upon the records and files of the case and all the proceedings, motions and rulings had in the trial thereof.

Wherefore, defendant prays that the court grant a judgment of acquittal on each of the counts named or, in the alternate, a new trial.

Dated: December 23, 1955.

/s/ MORRIS LAVINE,
Attorney for Defendant.

Points and Authorities

I.

The court erred in its construction of the meaning of business of wholesale or retail liquor dealer.

The evidence in this case showed the defendant did not make a sale; that he [17] was not operating any business or conducting any business on or about September 15th, 1955.

The government, in its Trial Memorandum, were relying on proof of at least one sale to establish the defendant was engaged in a business of a wholesale or retail liquor dealer.

The case of United States v. 673 Cases of Distilled Spirits & Wines, 74 Fed. Supp. 622, cited by the government, holds that:

“In order to sustain the allegation of libel, a single sale is sufficient * * * where there are corroborating circumstances tending to show the defendant was a wholesale liquor dealer * * * or where he had liquor on hand, or was

ready and able to procure it, in either case with the purpose of selling some or all of it to such persons as he might accept as customers.

No such circumstances existed here. There was no evidence of a single customer, or any evidence of the sale of any liquor. This applies to Counts Two, Three and Four of the Indictment.

As to Count Five, there is a fatal variance as the only proof in this case was not 40 gallons, but two gallons. There is no proof as to the contents of 40 gallons, or that it was unpaid, or distilled spirits.

II.

The evidence was illegally searched and seized in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

United States vs. Boyd,
116 U. S. 616;

Silverthorne Lumber Co. v. United States,
251 U. S. 385, 64 L. Ed. 319.

III.

The court also erred in admitting evidence without any proper foundation being laid as to its free and voluntary character from the defendant, the same consisting of purported statements in the nature of confessions by the defendant to the officers.

Before such statements can be admitted, it must be shown that they are free and voluntary and a

proper foundation must be laid for their admission. [18]

Chambers v. Florida,
309 U. S. 227, 84 L. Ed. 716;

Brown v. Mississippi,
297 U. S. 278, 80 L. Ed. 682;

Spar v. United States,
156 U. S. 51, 39 L. Ed. 343;

Lisenba v. California,
314, U. S. 219, 86 L. Ed. 166.

In any case in which a confession or admissions in the nature of a confession are to be used, there should be a proper foundation laid to show that they were, in fact, free and voluntary.

In the instant case, the officers testified at great length to purported conversations which amounted to confessions, it believed. Such statements should not have been admitted until or unless it was shown that they were free and voluntary. Objections were made on that ground and overruled.

There was no proof of possession and ownership of the equipment, except through the purported conversation with the defendant. No other evidence was offered.

Respectfully submitted,

/s/ MORRIS LAVINE,

Attorney for Defendant.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 27, 1955. [19]

[Title of District Court and Cause.]

MINUTES OF THE COURT

JANUARY 16, 1956

Present: Hon. Harry C. Westover, District Judge.

Ass't U. S. Att'y, Joseph F. Bender.

Counsel for Defendant, Morris Lavine.

Defendant present (on bond).

Proceedings:

For (1) hearing motion of defendant, filed Dec. 27, 1955, for judgment of acquittal, or in the alternate for a new trial.

(2) Sentencing on counts 2, 3, 4 and 5 of Indictment (verdict of guilty—judgment of acquittal as to count 1).

Attorney Lavine argues in support of motion (1) of defendant for judgment of acquittal, etc., and further renews motion to suppress.

Court Orders all motions denied.

Court Sentences defendant to two years imprisonment on each of counts 2, 3, 4 and 5 of the Indictment, to run concurrently, and pay a fine unto U. S. A. in the sum of \$500, on each of said counts, making a total of \$2,000.

It Is Adjudged that bond of defendant be continued in force and effect for 48 hours.

JOHN A. CHILDRESS,
Clerk. [21]

United States District Court for the Southern
District of California, Central Division

No. 24515-Criminal

UNITED STATES OF AMERICA,

vs.

MILTON GRADY RAMSEY.

JUDGMENT AND COMMITMENT

(Rev. 7-52)

On this 16th day of January, 1956, came the attorney for the government and the defendant appeared in person and by counsel, Morris Lavine, Esq.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and verdict of guilty of the offense of on or about Sept. 15, 1955, did carry on the business of a distiller without having given bond, did engage in, did carry on the business of a rectifier, did possess distilled spirits, in violation of Sections 5606, 5603, 5691, 5642, Title 26, U. S. Code, as more fully set forth and as charged in Counts 2, 3, 4 and 5 of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or

his authorized representative for imprisonment for a period of two years on each of Counts 2, 3, 4 and 5 of the Indictment, to run concurrently and pay a fine unto the United States of America in the sum of \$500.00 on each of said counts, total fine \$2,000.00.

It Is Adjudged that the bond of the defendant be continued in force and effect for forty-eight hours.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ HARRY C. WESTOVER,

United States District Judge.

[Endorsed]: Filed January 16, 1956. [22]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the United States District Court;
for the Southern District of California, Central
Division

Name and Address of Appellant: Milton Grady
Ramsey, 1101 W. 223d Street, Torrance, Cali-
fornia;

Name and Adress of Appellant's Attorney: Morris
Lavine, Esquire, 215 West Seventh Street,

Suite 620, Los Angeles, California, Telephone TR 3241.

Offenses: Violation of Internal Revenue Code, Title 26, Section 5606 as required in Section 5176 (a); Section 5603 as required in Sections 5175 (a) - 5271 (a); Title 26, Section 5691, as required in Title 26, Section 5081; Title 26, Section 5642, as required by Section 5008 (b) (1). (Engaging in business of distiller; without paying tax and failing to notify government of operations; possession of unpaid tax on distilled spirits.)

Judgment: Judgment was pronounced on Counts II, III, IV and V of the indictment on January 16, 1956, as follows:

Count Two—two years in custody of attorney general and fine of \$500.00;

Count Three—two years in custody of Attorney General and fine of \$500.00; [23]

Count IV—two years in custody of Attorney General and fine of \$500.00;

Count V—two years in custody of Attorney general and fine of \$500.00.

Sentences in the custody of Attorney General to run concurrently.

The total fine to be \$2,000.00.

Name of Institution where now confined if not on bail: None.

Bail fixed at \$5,000.00.

I, Milton Grady Ramsey, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgments. I elect not to serve my sentence

pending appeal. Bail was fixed by the trial judge, on appeal, in the sum of \$5,000.00.

Dated: January 17, 1956.

/s/ MILTON GRADY RAMSEY,
Appellant.

/s/ MORRIS LAVINE,
Attorney for the Appellant.

Bail fixed on appeal by Judge Westover in sum of \$5,000.00.

[Endorsed]: Filed January 17, 1956. [24]

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the United States District Court
for the Southern District of California, Central
Division:

You will please prepare the following record for
and on behalf of the defendant's appeal in the
above-entitled action:

1. The complete Reporter's Transcript of the trial, in the courtroom of Judge Harry Westover;
2. The Clerk's Transcript consisting of the Indictment;
3. Motion to Suppress the Evidence;
4. Opposition to the Motion to Suppress the Evidence;
5. The Clerk's Minutes on the arraignment and on the hearing on Motion to Suppress the Evidence;

6. The Minutes of the Court of each day of trial;
7. The Verdict of the Jury;
8. The Motion for Judgment of Acquittal and/or in the Alternate for a New Trial;
9. The Order Denying Motion for Judgment of Acquittal and/or New [25] Trial, and the Clerk's Minutes thereon;
10. The Judgment and Sentence;
11. The Notice of Appeal, and
12. This Praecipe.

Dated: January 23, 1956.

/s/ MORRIS LAVINE,

Attorney for Defendant and
Appellant.

Affidavit of Service by mail attached.

[Endorsed]: Filed January 26, 1956. [26]

[Title of District Court and Cause.]

AFFIDAVIT FOR ENLARGEMENT OF TIME
FOR FILING AND DOCKETING RECORD
ON APPEAL

State of California,

County of Los Angeles—ss.

Morris Lavine, being first duly sworn, deposes and says:

That he is the attorney of record for the appellant in the above-entitled action. That the record on appeal is now being prepared and a reporter is preparing the Reporter's Transcript on appeal, but

that affiant has been advised that it may not be possible to complete it in time.

That the time within which the record must be docketed and filed with the United States Court of Appeals for the Ninth Circuit, unless it is extended by this Honorable Court, is February 26, 1956.

Wherefore, affiant prays that this Honorable Court extend and enlarge the time for thirty (30) additional days to prepare and docket the record on appeal in the above-entitled action.

/s/ MORRIS LAVINE.

Subscribed and sworn to before me this 21st day of February, 1956.

[Seal] /s/ VERONA TAFT,

Notary Public in and for Said
County and State. [28]

ORDER

Upon application of Morris Lavine, attorney for the above-named defendant and appellant, and good cause appearing therefor,

It Is Ordered That the time within which the record on appeal may be prepared and docketed be and the same is hereby extended for a period of thirty days, to and including, March 27th, 1956.

/s/ HARRY C. WESTOVER.

Judge Presiding.

[Endorsed]: Filed February 23, 1956. [29]

In the United States District Court, Southern
District of California, Central Division

No. 24,515-Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MILTON GRADY RAMSEY,

Defendant.

Honorable Harry C. Westover, Judge Presiding.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Tuesday, December 20, 1955

Appearances:

For the Plaintiff:

LAUGHLIN E. WATERS,

United States Attorney, by

LEWIS LEE ABBOTT,

Assistant United States Attorney,

Chief, Criminal Division, and

JOSEPH F. BENDER,

Assistant United States Attorney.

For the Defendant:

MORRIS LAVINE, ESQ.,

619-620 A. G. Bartlett Bldg.,

217 West Seventh Street,

Los Angeles 14, California.

Tuesday, December 20, 1955—10:00 A.M.

(Other court matters.)

The Clerk: Case No. 24,515, Criminal, United States of America vs. Milton Grady Ramsey.

Mr. Lavine: Ready for the defendant, subject to a motion to suppress evidence and dismiss the case.

Mr. Bender: Ready for the Government.

Mr. Lavine: The Government estimates two days. I think that is a fair estimate. It may take a day and a half.

The Clerk: Is the defendant here, Mr. Lavine?

Mr. Lavine: Yes, right next to me.

(Other court matters.)

The Court: Well, we will proceed with the selection of the jury in your case, Mr. Lavine. If you will make your motion, I will take it under submission, and I will let you argue.

Have you your motion?

Mr. Lavine: Yes, sir. It is in writing.

The Court: May we consider the motion made in open court and I will take the matter under submission, and we will proceed with the selection of the jury.

Mr. Lavine: Thank you, your Honor. The Commissioner's file will have to be brought down in connection with the [3*] motion. May that be deemed to be offered in evidence at this time or——

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Court: It will be deemed to be offered. It won't be deemed that it is received.

Mr. Lavine: Very well. That is in connection with the motion.

The Court: The motion is filed.

(Whereupon, the motion was filed with the clerk.)

(Whereupon, the following jurors, duly empaneled, were sworn to try the case:

1. Glenn A. Davidson,
2. Florence A. Hanger,
3. Charles R. Treulich,
4. Aranka Rubin,
5. Florence R. Simon,
6. Charles H. Mattern,
7. Jacqueline L. Haslett,
8. Grover C. Starling,
9. Joseph C. Caicedo,
10. Stephen Zewatch,
11. Dorothy Kammerman,
12. S. King Lanham.)

The Court: Ladies and gentlemen of the jury, we are going to proceed with your case, but in the meantime we have another jury to select and we also have some motions.

Mr. Lavine, how long will it take for you to argue your motions?

Mr. Lavine: 15 or 20 minutes, your Honor.

The Court: Well, we have another jury to select and then we will have these motions. By that time

I think it will be nearly noon. I think I will excuse you until 1:30. [4] Now, please be back here in this courtroom at 1:30 without any further directions. And remember now that you are not to discuss this case with anyone and you are not to allow anyone to discuss it with you and not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

Now, you may retire, but be back here promptly at 1:30. Will you leave as quietly as possible as the courtroom is still in session. And when you come back at 1:30 will you please go to the jury room on the third floor.

(Whereupon, the jury was excused until 1:30 of the same day.)

(Other court matters.)

The Court: The record may show, Mr. Lavine, that you made the motion before the empanelment of the jury and I took it under submission until I had time to consider it. Now I will consider it.

Mr. Lavine: Your Honor, I had the clerk's office search for the search warrant and the return which was filed by Commissioner Hocke with the clerk's office, and they have hunted high and low and cannot find the original. I could not find it in your file. I wonder if by any chance it is in your chambers.

The Clerk: What was that?

Mr. Lavine: The search warrant and the return of the [5] search warrant. I have Mr. Hocke here, whom I have subpoenaed. I looked through the

file and I showed the Government the search warrant that was given to my client and the return which was attached to it, and I have Mr. Hocke here for the purpose of proving it up by secondary evidence, since we cannot find the original. The clerk's office has three deputies looking for it. The court can take judicial notice that I offer it in evidence at this time on behalf of the defendant, and if your Honor desires proof by Mr. Hocke that that is the search warrant he issued——

Mr. Bender: The Government will stipulate that was the search warrant served on the defendant and issued by the Commissioner.

Mr. Lavine: I will accept the stipulation.

The Court: All right. What's wrong with the search warrant?

Mr. Lavine: There is nothing wrong with the search warrant as far as it goes, but the search was made beyond the scope of the search warrant. The search warrant only provides for a search for illegally possessed spirits, and that is the extent of the search warrant.

“Rule 41(e) of the Rules of Criminal Procedure provides that ‘a person aggrieved by an unlawful search and seizure may move the District Court for the District in which the property was seized for [6] the return of property and suppress for use as evidence anything so obtained’ on innumerable grounds.”

I am reading now from *Cyclopedia of Federal Procedure* by Nichols, Volume 3, Section 131.13.

One of the grounds for the motion is the the property seized is not that described in the warrant.

Now, what they seized, your Honor, as shown by the return on the warrant, is not merely the alcoholic spirits, but they seized a number of other articles, all set out in their receipt, and they destroyed those articles. Now, they propose to present evidence in this case relating to the matters on which they had no search warrant, and it is my position, first, that this indictment necessarily had to be obtained on those matters on evidence that went beyond the scope of the search warrant and the right to search and seize as provided by the Fourth and Fifth Amendments. The Fifth Amendment provides

“* * * no warrant shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.”

Now, they seized a number of articles there, as your Honor sees by the return, that are not set out in the search warrant. The only thing that was set out in the search [7] warrant was the matter of alcoholic spirits. The rest——

The Court: Mr. Lavine, let me ask you a question: Supposing they go before the proper authorities to get a search warrant and make a representation that they have probable cause to believe that a man has in his possession in his hotel room 40 ounces of marihuana and they get a search warrant

and go into the room and find 40 ounces of marijuana and also 40 ounces of heroin.

Do you mean to say that any evidence of heroin is out, that you cannot produce it before the court because the search warrant didn't say anything about heroin?

Mr. Lavine: Yes, your Honor, I do specifically——

The Court: Where is your case. I want to know what the courts are saying, not Mr. Lavine.

Mr. Lavine: Just a minute, your Honor. I may be able to quote it.

The Court: Well, you give me the case and I will read it.

Do you have any case to the contrary?

Mr. Bender: Harris vs. United States.

Mr. Lavine: The Harris case is based upon a valid arrest and an incident to a valid arrest.

The Court: Don't tear down the Government's cases. He wants to know your cases.

Mr. Lavine: I have cited them, I think, in the memorandum. [8]

The Court: Mr. Bender, what was the citation to your case?

Mr. Bender: Harris vs. United States, 331 U. S. 145; and, in particular, page 154 and page 155.

The Court: Mr. Lavine, do you have any authorities other than what you set forth in your memorandum?

Mr. Lavine: I have authorities on the subject of search and seizure galore, but I didn't want to set all of them forth.

The Court: Well, you admit now that the warrant is good as far as 40 gallons of un-tax-paid distilled spirits is concerned?

Mr. Lavine: That's correct.

The Court: They went in and found the 40 gallons of untaxed distilled spirits. In addition to that they found a still.

Mr. Lavine: They didn't have any search warrant for a still.

The Court: But they were legally inside.

Mr. Lavine: Assuming they were legally inside, the seizure thereafter didn't make it legal. The case on that is *Takahashi vs. the United States* in 143 Fed. 2d—I can't give you the page.

The Court: The issue here is very simple. [9]

Mr. Lavine: *Boyd vs. United States*.

The Court: They had a right to go in and get the 40 gallons of untaxed distilled spirits.

Mr. Lavine: That is correct.

The Court: Give me your case that they cannot, when they are legally inside, testify as to anything else they found on the premises. That is a simple proposition. If that's the law, I will sustain you. But I want to know.

Mr. Lavine: I have two cases on the subject that the right to search does not give the right to seize. One is *Takahashi* in 143 Fed. 2d, your Honor. I am giving it from memory. But I am pretty sure that is correct. And the other case is *Boyd vs. United States*, 116 U. S. at 616.

The Court: Do you know what the page number is in 143 Fed. 2d?

Mr. Lavine: No, your Honor.

The Court: What is the name of the case?

Mr. Lavine: T-a-k-a-h-a-s-h-i vs. United States. It is the case where the Government had a lawful right——

The Court: I will read the case. I want to read the case.

Mr. Lavine: If I may just have a minute, I have another case here which I wanted to cite to your Honor. It is in my memorandum, but I haven't found it in the Law Edition, and if I may just have a minute I will give it to your Honor. [10] Silverthorne Lumber Co., your Honor.

The Court: That's in your memorandum.

Mr. Lavine: That is in my memorandum. And the cases cited there, if your Honor please, I think sustain my position in this matter. There is a——

The Court: Don't give me the cases cited in the Silverthorne case.

Mr. Lavine: No, your Honor. But there is—in the Silverthorne case they had no vestige of authority. In the Harris case cited by the Government they had there a valid arrest and they went in at that time and they made a valid arrest; and the court there, by a closely divided United States Supreme Court—I think it was 5 to 4—came to a decision that held that having been in there legally and having made an arrest that that was an incident of an arrest. But here this search was made pursuant to a search warrant, not through an incident of an arrest.

The Court: When was the defendant arrested?

Mr. Lavine: After the search, your Honor.

The Court: In the same premises?

Mr. Lavine: That, I believe, is correct. I am not sure of that, your Honor, but I believe the evidence will show.

The Court: Supposing they went in and found 40 gallons of untaxed liquor and arrested the defendant and found the [11] rest of the stuff.

Mr. Lavine: They couldn't have gone in without a warrant. They would have been in there illegally.

The Court: I will read your cases.

Mr. Bender, do you have any other cases?

Mr. Bender: I would like to speak very briefly, if I may.

Mr. Lavine: I would like to call your Honor's attention to the rules as set forth in this Federal Procedure form and the discussion there.

The Court: I will read what the courts have to say, Mr. Lavine.

Mr. Bender: Your Honor, the Government went to the premises pursuant to a lawful search warrant and found the 40 gallons of unpaid tax distilled spirits. The finding of the 40 gallons was pursuant to a lawful search warrant. The Harris case clearly holds——

The Court: Don't tell me what it holds. I will read the court case. If you have any other authorities I would like to have them.

Mr. Bender: I would like to read about half a page from the——

The Court: I would rather read it.

Mr. Bender: May I point out the portion that the Government considers to be good discussion? [12]

The Court: I will read it all. I won't read part of it.

The court will take the matter under submission. I will rule when the Government attempts to introduce the testimony. In the meantime, I will read these cases.

The Court will stand in recess until 1:30 o'clock this afternoon.

(Whereupon, a recess was taken until 1:30 o'clock of the same day.) [13]

Tuesday, December 20, 1955—1:30 P.M.

The Court: Is it stipulated that the jury is present and in the box?

Mr. Bender: So stipulated. And the defendant is present.

Mr. Lavine: So stipulated.

The Court: Do you want to make an opening statement?

Mr. Bender: No, your Honor.

Mr. Lavine: We will reserve our opening statement.

Your Honor, before the first witness is called, I want to object to any evidence on Count One of the indictment since it fails to state an offense in the language of the statute of the United States. If

your Honor will get the statute, Section 5174(a), I believe the word "set-up" is omitted.

The Court: What is missing?

Mr. Lavine: The word "set-up." In other words, the mere possession is not sufficient. It has to be set up according to the language of the statute.

Mr. Bender: If your Honor please, and if counsel please, I believe that we can shorten this by the Government stating, and as I do state, that we do not intend to offer any evidence on Count One in the indictment.

Mr. Lavine: Well, we agree at the start of the case, [14] anyhow, your Honor. And that shortens the matter.

Mr. Bender: I think counsel is absolutely correct, the requirement being that it is set up, and it comes to my attention, by investigation and reading of the file, that it was not set up at the time.

Mr. Lavine: The other motion I have to make is that the witnesses be excluded.

The Court: I don't usually make that ruling, Mr. Lavine, unless there is some very good reason.

Mr. Lavine: There will be a conflict in facts, your Honor, once these various officers——

The Court: The motion to exclude is denied.

Call your first witness.

Mr. Bender: The Government calls Bruce B. Awrey, as its first witness.

BRUCE B. AWREY

called as a witness on behalf of the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Bruce B. Awrey, A-w-r-e-y.

Mr. Lavine: Your Honor, in order to avoid repeating the objection which was made, may it be deemed that I have a continuing objection?

The Court: You may have a running objection based upon your objection this morning. [15]

And, by the way, have you got your instructions?

Mr. Lavine: No. I will have them. I am having stenographic troubles. I will try to have them the first thing in the morning before court convenes.

The Court: Ordinarily I discuss instructions with counsel, and the statute provides that I shall notify counsel what instructions I am going to give. If you don't have instructions——

Mr. Lavine: I thought the Government had covered most of the things I wanted to cover, pending, however, what evidence comes out here, and I will have instructions based on the evidence, your Honor.

Direct Examination

By Mr. Bender:

Q. Mr. Awrey, what is your profession or occupation?

A. I am a criminal investigator with the Alcohol and Tobacco Tax Branch of the Internal Revenue Department.

Q. For how long have you been so employed?

(Testimony of Bruce B. Awrey.)

A. 27 years.

Q. During that 27 years, did you have occasion to investigate stills? A. I have.

Q. Are you familiar, in general, with the operation of a still? A. I am. [16]

Q. Would you describe the working parts of a still?

A. The working parts of an ordinary still is, first of all, a burner; and that is placed under what we call the pot or the still proper where the mash is put in. From that there is a gooseneck or pipe that runs to a condenser, or it is a cooling system, a barrel with, usually, a metal barrel or any kind of a barrel with a coil in it which cools it from a vapor to a solid.

Q. What are the normal ingredients that are used in a still in the making of distilled spirits?

A. Well, there is quite a variety, but the basis for whiskey is usually corn sugar.

Q. I believe malt and yeast, also?

A. Yes. And then they add barley, wheat—any grain. But the base is usually corn sugar.

Q. Directing your attention to on or about September 15, 1955, what, if anything, did you observe on that date with reference to this case?

A. On September 15, 1955, with Investigators Jones and Warner, I went to 223rd Street, Hawthorne, and there we met Investigators Travis and Coughran.

Q. What did you do?

A. At that time Investigator Jones handed me

(Testimony of Bruce B. Awrey.)

a search warrant. The search warrant was for the premises located at 1011, which is a large house, and 1011½, which is a small [17] house, West 223rd Street.

Q. Mr. Awrey, could that have been in Torrance rather than in Hawthorne, the address? Or are you certain whether that was in Hawthorne?

A. Well, I thought it was in Hawthorne. It may not be.

Mr. Lavine: I object to the witness being led.

The Witness: But that was the address, anyway. These two houses are within the same enclosure. There is a driveway that runs up to—an entrance driveway to 1011 and also to 1011½.

This search warrant was directed to search for un-tax-paid distilled spirits. At this time, why, Investigator Warner and I drove in one car, entering the driveway at 1011.

Q. Was that on the east side of the——

A. That is the large house. Investigators Travis and Jones and Caughran, with another car, entered the driveway entering into 1011½. We drove in the same time. As I got out of the car I noticed a Plymouth car in the driveway. When we first went in we didn't notice anybody. But Investigator Warner noticed a man in the——

The Court: You can't testify as to what somebody else noticed. Only testify as to what you noticed.

Q. (By Mr. Bender): What did you see and do?

(Testimony of Bruce B. Awrey.)

A. As we approached the house Warner went back, and I went back with him, towards the front fence and the fence [18] dividing—small fence or hedge dividing the places.

Q. In other words, a direction away from the house?

A. He went back, and he met the defendant, Ramsey, and as I approached them, why, I heard him ask Ramsey if he was not Mr. Ramsey, and he said he was. At that time we showed our credentials as investigators to Mr. Ramsey. I handed him a copy of the search warrant and explained to him that this search warrant covered both premises and the outbuildings, and that we were looking—the search warrant covered un-tax-paid distilled spirits.

We then entered the large house at 1011. I didn't stay there very long because there was no odor whatsoever of distilled spirits, or manufacturing of distilled spirits.

Q. Do you use an odor test as a mean of ascertaining if there is any distilled spirits?

A. Yes, sir. Shortly after—I did really search that house around there, made a quick search.

Q. What is this odor based upon that you say you use in searching?

A. Based upon distillation and odor of whiskey after it is manufactured, or any kind of liquor.

Q. What did you do then?

A. I proceeded across to the little house, and

(Testimony of Bruce B. Awrey.)

with Investigator Jones I made a quick survey of that. There was no odor in there, or any sign of liquor distillation or [19] anything, so I didn't waste very much time in there.

And as I came out of the back of this little house there was a row of sheds there, a shed, a garage and a third shed—second shed, rather. And there I met Investigator Warner. From the first shed there was a strong odor of fermentation. From the second out-house, or a small garage, it was much stronger. I could not only smell the odor of distillation, but of liquor, too.

We proceeded down to the second shed, or the third small building in back of this small house, and there was also an odor of fermentation emanating from that building.

We returned back to the first shed, or the first building in back of the little house, and there we waited until Investigator Travis got Mr. Ramsey. And then he unlocked the first—

Q. By "he," who do you mean?

A. Mr. Ramsey. He unlocked the first shed.

Q. What did you do then?

A. Therein I noticed a hot water tank, a mash barrel; and by stepping in the door a little I could see no bottles of distilled spirits.

We opened the garage or the second shed.

Q. In what manner was it unlocked?

A. Mr. Ramsey unlocked it. Therein I could see two 5-gallon bottles and cases with gallon bottles of a brownish [20] liquor that looked like whiskey.

(Testimony of Bruce B. Awrey.)

These bottles also had no strip stamps, no indication that tax had been paid.

I opened one of the gallon bottles, tasted it and smelled it, and knew it to be whiskey.

Mr. Lavine: I object to that. There has been no proper foundation. It is irrelevant, incompetent and immaterial.

The Court: It may go out. That is, it may go out about what he knew. He opened and tasted it. That may remain in.

Q. (By Mr. Bender): Mr. Awrey, would you describe a strip stamp. What is it?

A. A strip stamp is a small stamp about half an inch wide that covers over the bottle cap. That is glued on and usually covered with another seal.

Q. In other words, it is glued in such a manner then that the bottle can or cannot be opened without breaking the strip stamp? A. That is right.

Q. Which way can it be done?

A. It can be opened by cutting it open.

Q. All right. Would you continue with your testimony then as to what you did after you found these bottles?

A. At that time I placed the defendant under arrest.

We continued the search. And in the third building, or the second shed, I found a still condensor.

Mr. Lavine: I object to that as a conclusion of the [21] witness.

Mr. Bender: This witness testified to 27 years

(Testimony of Bruce B. Awrey.)

of experience with stills and being an officer of the law.

The Court: Can't he describe what he found?

Mr. Bender: Yes, your Honor.

Q. (By Mr. Bender): Would you describe what you found?

Mr. Lavine: I move that the last answer be stricken, your Honor.

The Court: The last answer may go out.

Q. (By Mr. Bender): What did you find? Describe its general appearance, its shape and its size.

A. This was probably a 25-gallon metal barrel, you could call it, with an open top. It had a coil in it at the top to fasten on the gooseneck that goes to the still, and the other for a drain. This is a cooling system for a still.

Mr. Lavine: I move the last answer be stricken, the last part of that answer, as a conclusion of the witness.

The Court: It may go out.

Q. (By Mr. Bender): Have you actually described the physical appearance of what you found at that time?

A. Except the coil is in the barrel.

Q. Yes. What did you proceed to do after finding this?

A. Then I found the heater, or the platform, heating [22] platform for the stove. Also, I found four mash barrels that had not very recently been used; and several other barrels. Some of them had oat chips in.

(Testimony of Bruce B. Awrey.)

Q. What?

A. Oat chips. Charcoal in some of the barrels. We didn't—

The Court: I understand that these barrels didn't show any evidence of recent use.

The Witness: Those four barrels, that's right. And there was a lot of other storage there of old barrels and boxes that had nothing to do with the still.

Then I continued to search by myself. I wanted to find the complete still if it was on the premises. I found a box—

Mr. Lavine: Just a minute. I object to that as being incompetent, irrelevant and immaterial. This relates to Count One, your Honor, which the Government said they are not proceeding on.

Mr. Bender: Your Honor, it relates to the other counts of the indictment.

The Court: Overruled.

The Witness: I found a large box next to the garage and about 20 feet in front of the third building I described. In this box I found a hundred-gallon pot, or what they call the pot part of a still.

Mr. Lavine: I move to strike that "what they call the [23] pot part of a still."

The Court: It may go out. He found a hundred-gallon pot.

Q. (By Mr. Bender): Did you find anything else, Mr. Awrey?

A. At that time, or shortly after, I asked Mr.

(Testimony of Bruce B. Awrey.)

Ramsey how large this still was and he told me this pot—he told me 100 gallons.

Mr. Lavine: Just a minute. I object to that as incompetent, irrelevant and immaterial; no proper foundation laid.

The Court: This is conversation.

Mr. Lavine: Yes, your Honor.

The Court: He said, "How big is the still," and then Mr. Ramsey answered him. Isn't it admissible?

Mr. Lavine: He had the defendant under arrest. He was then in custody. There is no showing it was a voluntary statement.

The Court: Overruled. The answer may stand.

Q. (By Mr. Bender): What did he reply to you, sir, after you asked him the question?

A. At that time I asked him where the goose-neck was, or the connecting pipe, and he said it should be in the box with the still.

I said, "It's not there." [24]

He says, "I don't know where it is." Later, I found this in the garage, which I have already mentioned, where we found the distilled spirits back of an aging barrel.

Q. I don't know whether you answered as to what the defendant stated to you after you asked him how large the still was?

A. He told me it was 100 gallons capacity.

The Court: May I get something straight? I understand that you went into these three buildings and you found various materials that you have

(Testimony of Bruce B. Awrey.)

described. Now, I assume from what you said it is your opinion that these materials could be used as a still. Is that correct?

The Witness: That is what I am coming up to, sir. That is right.

The Court: But you have described three buildings.

The Witness: That's right.

The Court: Part was found in one building and part was found in the other building. Now, if this could be used for a still—it actually wasn't set up as a still, was it?

The Witness: That's right.

The Court: And hadn't been assembled as a still?

The Witness: I assembled it before I finished.

The Court: Not what you did. But when you saw it, it hadn't been assembled as a still?

The Witness: You are right. [25]

The Court: And you talk about four barrels, mash barrels that didn't show any evidence of recent use. As far as you know, you don't know, if that was a still, you don't know when it was used, do you?

The Witness: I do. Further investigation and further conversation with Mr. Ramsey, that was established, sir.

The Court: You go ahead.

Q. (By Mr. Bender): Would you continue, Mr. Awrey? What did you do then?

A. Then I found the gooseneck which completed

(Testimony of Bruce B. Awrey.)

the still setup, and assembled it, without putting it together at that time. I told Mr. Ramsey, "I have a complete still here."

He says, "I see it."

That is all the conversation.

Q. Did Mr. Ramsey say anything in reply to your statement?

A. He said, "I see it." That is all he said.

In looking for this gooseneck I found, in the first building we unlocked, eight mash barrels that were in very good condition and had been used in the last month or so. I also found a mash hose which went from the back door of this little building under the small house. It established, as far as I was concerned, where the still had been set up.

In this room I also found 5½ sacks of corn sugar and various other—oh, hydrometers; and there was a home [26] manufactured air purifier in this same room, which would take the poisonous gasses that come from the fermentation and take care of them.

Mr. Lavine: I move to strike that as a conclusion of the witness.

The Court: It may go out.

The Witness: Some malt syrup.

Mr. Bender: This witness has had 27 years of experience in this particular phase and certainly under Wigmore——

The Court: I am not restricting him. He is testifying to what he found.

Mr. Bender: Also, as an expert, what the materials were, what they constitute.

(Testimony of Bruce B. Awrey.)

The Court: Well, I don't know. It's possible that he could be qualified. I have seen lawyers with 25 years of experience that I don't consider very good lawyers. And I have seen doctors with that amount of experience that I don't consider to be good doctors. If you qualify the witness I will let him testify. But no qualification has been made.

Q. (By Mr. Bender): Mr. Awrey, during your 27 years of experience how many stills have you had occasion to investigate, if you can estimate?

A. I would like that question clarified a little because I have had many stills gone through my hands, many more than I actually seized. But if you take the number of stills of [27] various kinds that have just gone through my hands that I have examined parts of them—I seized the larger part of them—it would be more than 800.

The Court: Have you watched a still in operation?

The Witness: Many, sir.

The Court: Have you assembled a still?

The Witness: Many of them.

The Court: Have you operated a still?

The Witness: Yes, sir.

The Court: Do you know the pieces that are required to make a still?

The Witness: An ordinary bootleg still, yes. But in a large legal distillery there are parts that are a little bit beyond me, sir.

The Court: Well, you are interested in the smaller stills, aren't you, more or less?

(Testimony of Bruce B. Awrey.)

The Witness: Yes. I worked four and a half years where I had the still house to take care of and I got very well acquainted with those. But there are still parts that are puzzling.

The Court: You are familiar with the parts that are required to set up the still?

The Witness: Yes, sir.

The Court: And you are familiar with the operations of the still? [28]

The Witness: That's right.

The Court: All right.

Q. (By Mr. Bender): Mr. Awrey, as a matter of fact, in this very case you found the parts and assembled them into what you considered to be a still, is that right? A. Yes, dozens of them.

Q. What about this particular case, the Ramsey case? A. I assembled a complete still.

The Court: Just a minute. By the word "assembled," do you mean you laid it out on the ground or you put it together so it would work?

The Witness: I tried the parts to see if they would fit, but I didn't go to the trouble of putting them together. We have a photograph of them.

The Court: In other words, you got all the parts together and from the parts you could determine that they would make a still?

The Witness: That's right.

The Court: But you didn't try it to see if it would work?

The Witness: I didn't try the still.

The Court: You didn't fire it up?

(Testimony of Bruce B. Awrey.)

The Witness: No.

Q. (By Mr. Bender): You testified that you found an air purifier, is that correct? [29]

A. That's right.

Mr. Lavine: May I take the witness on voir dire, your Honor, now?

The Court: Yes.

Mr. Lavine: Did you ever have anything to do with air purifiers?

The Witness: Not very much. Mr. Ramsey told us that——

Mr. Lavine: I didn't ask you that. I am just asking the questions about your experience now.

The Witness. I have run across several of them—different types. They are usually homemade. The average air——

Mr. Lavine: You have answered my question.

Have you ever made any air purifiers yourself?

The Witness: No, sir, I haven't.

Mr. Lavine: Have you ever taken any into custody as an officer?

The Witness: They were usually left on the job. I have seen many of them.

Mr. Lavine: You can answer that yes or no. Have you ever taken into custody, as an officer, an air purifier?

The Witness: Have I ever taken any of them?

Mr. Lavine: Yes.

The Witness: No.

Mr. Lavine: In connection with your work on

(Testimony of Bruce B. Awrey.)

stills have you ever—you said you operated a still. When did [30] you last operate a still?

The Witness: It would be many years ago. And I think I would like to explain why we operated them.

Mr. Lavine: Just answer the question, if you don't mind.

The Witness: Probably 15 years ago at least—15 or 20.

Mr. Lavine: Have you ever operated a still of the type that you say you saw in these premises?

The Witness: No.

Mr. Lavine: When was the last time that you actually saw a still in operation?

The Witness: Oh—are you referring to the large or small stills?

Mr. Lavine: Well, I am referring to the small stills now, if you want to divide them up into types.

The Witness: It may be that long ago.

Mr. Lavine: 15 years ago?

The Witness: Yes.

Mr. Lavine: When did you last see a still put together so that it would operate?

The Witness: Oh, probably a year ago.

Mr. Lavine: I am talking about the small stills now, not the big stills.

The Witness: That's right.

Mr. Lavine: What do you call a still? What is your [31] definition of a still?

The Witness: To me a definition of a still would be a plant that would make distilled spirits fit for

(Testimony of Bruce B. Awrey.)

human consumption from a mash that was already fermented.

Mr. Lavine: And would it have to have water? Would it have to have a connection for water?

The Witness: It would have to have water.

Mr. Lavine: Would you have to have piping?

The Witness: That's right.

Mr. Lavine: I have no further voir dire questions. The rest will be cross-examination.

I submit his last experience, 15 years ago, your Honor, is certainly——

The Court: I think that goes to the weight rather than the substance.

Mr. Lavine: I will renew my objection, for the purpose of time, on the ground that no proper foundation has been laid.

Q. (By Mr. Bender): Describe any difference between the still or stills that you have operated and the one that you say you found on the premises, the Ramsey premises.

A. There are various kinds of stills, and this is an ordinary pot still, as we would call it.

Q. This was the one on the Ramsey premises?

Mr. Lavine: What? [32]

The Witness: Pot.

Q. (By Mr. Bender): What was the type, or what were the types that you operated at any time?

A. That would be a pot still, large and small, and which would be seized and kept operating for certain reasons.

Q. Well, was there any difference between the

(Testimony of Bruce B. Awrey.)

one you found at the Ramsey residence and the ones you operated?

A. Some difference, but they are a general type.

Q. Directing your attention again to this air purifier that you testified you found, in your opinion, what is the purpose for an air purifier for use in a still?

A. It is to take the poisonous air which is caused by fermentation out of the room, either take it out of the room or purify it.

Q. Directing your attention back to the general testimony you were engaged in prior to this discussion, did you find anything further, any piping or anything of that nature, on the premises?

A. I noticed some piping, but I didn't go into that—the connections—as much as the other investigators did.

Q. What did you do then at this time, if anything?

A. We get back to the time that we assembled the still. Then I made a further search and found these barrels that I described in the first shed there, and then I went into the garage, which was the second place we searched, and [33] there I noticed two aging barrels set on the side.

The Court: What is an aging barrel? You understand, but these people over here never had anything to do with stills. They are novices. What is an aging barrel?

The Witness: Whiskey has to be a certain age to be what we would call good drinking whiskey.

(Testimony of Bruce B. Awrey.)

That is hurried up by various processes. And in this case it was—the process will have to be explained by the other investigators because I——

The Court: I am just asking you from your 25 years of experience what an aging barrel is?

The Witness: An aging barrel is something that by a process they use to age it quicker than it would ordinarily.

The Court: You mean age whiskey?

The Witness: Various things they have to age, they will hurry up the aging—sometimes by electricity.

The Court: Then I suppose the answer to my question is that a barrel, an aging barrel is a barrel in which whiskey is aged. Is that it?

The Witness: That would be about it.

The Court: Don't try to tell us how, because you evidently are not an expert on how.

The Witness: No, I am not. There are too many types. I couldn't be an expert on that.

The Court: All right. [34]

The Witness: But I know an ager when I see it.

Q. (By Mr. Bender): Mr. Awrey, did you observe anything further at this time?

A. There were several cartons in that room, some empty with empty gallon bottles, and three of them each had four one-gallon bottles of un-tax-paid liquor.

Mr. Lavine: I move to strike the part about the un-tax-paid liquor.

The Court: It may go out. We haven't had it

(Testimony of Bruce B. Awrey.)

established that it is liquor. All we have had established is that it was liquid in the bottles.

The Witness: I tasted it and knew it was whiskey.

Mr. Lavine: I move to strike that as a conclusion of the witness.

The Court: It may go out, unless counsel wants to lay the foundation. If the foundation is laid, you may be able to testify.

Mr. Bender: We have an agent, your Honor.

The Court: All right.

Q. (By Mr. Bender): Is there anything that you have failed to relate that you saw or observed that occurred there?

A. A little later on I had a conversation with Mr. Ramsey in the presence of Investigator Warner. At that time I questioned Mr. Ramsey as to what part an old man had [35] in the ownership or control of what we had found. That is, a man that we found in the small building. This fellow, I think his name was Lloyd, told me that——

Mr. Lavine: Just a minute.

Q. (By Mr. Bender): Not what Lloyd told you, but what did the defendant say in answer to your question?

Mr. Lavine: I object to that as not within the issues of this case.

The Court: Overruled.

The Witness: He stated that the old man—the defendant stated that the old man had nothing to do whatsoever with the violation that we had found,

(Testimony of Bruce B. Awrey.)

including the liquor and still pots and mash barrels; that it was his alone.

Q. (By Mr. Bender): By "his," who did he say?

The Witness: Mr. Ramsey owned it by himself. He said that the old man had nothing to do with it. Further questioning him as to the time, the length of time that he had operated this plant, Investigator Warner stated to Mr. Ramsey, "You have been operating here at least a year."

Mr. Ramsey said, "No, only a few months."

Q. (By Mr. Bender): Was there anything further that you can think of at this time?

A. I don't remember of anything right now.

Mr. Bender: You may cross-examine. [36]

Cross-Examination

By Mr. Lavine:

Q. You said that in order to operate the still that there would have to be a mash?

A. That's right.

Q. You found no mash on the premises, did you? A. Only the mash barrels.

Q. What was that?

A. Only the mash barrels.

Q. Then your answer to my question is that you did not find any mash at the premises, is that right?

A. That's right.

Q. Now, in order to operate a still you also have to have water, don't you? A. That's right.

Q. Did you find any of this apparatus connected up to any water?

(Testimony of Bruce B. Awrey.)

A. Not the still. But there was water in the first building that we opened. That is, there was a sink there.

Q. But you didn't find it connected to anything?

A. That's right.

Q. In order to operate a still you also have to have—well, what else do you have to have in order to operate a still?

A. You have to have a gas connection. [37]

Q. Did you find any gas connection?

A. There was gas there, but not connected up with the still.

Q. What else do you have besides a gas connection, water and a mash?

A. Well, in order to have a distillery that is the main thing. You have to have a still set up with a water connection with the condenser because that condenser must be filled with water in order to cool off the steam that comes up to a liquid. And that was——

Q. You didn't find any steam coming up there, did you, on the premises?

A. The still was not set up. There were materials there sufficient to make the mash, but there was no mash made.

Q. And you didn't find any of these elements going at any time when you were on the premises, did you?

A. The still was not in operation when we were there.

Q. You said you were handed a search warrant.

(Testimony of Bruce B. Awrey.)

A. That's correct.

Q. Is that right? A. That's right.

Mr. Lavine: May I have the search warrant, your Honor?

(Whereupon the document was handed to counsel.)

Mr. Lavine: May I have leave to approach the witness, [38] your Honor, and show him this document?

The Court: Yes.

Q. (By Mr. Lavine): Now, I will show you a copy of a search warrant and ask you if that is the search warrant that you were given at that time?

A. That's right.

Q. Speak up so the jury can hear you.

A. That is the search warrant.

Q. And that search warrant only specified the search for tax unpaid distilled spirits, is that correct? A. That is correct.

Q. You nevertheless went on to search the premises for other things besides what was specified in the search warrant, is that correct?

A. As soon as we found the un-tax-paid spirits Ramsey was placed under arrest. We didn't know but what there were other distilled spirits on the premises. So I continued to search for the distilled spirits, at the same time looking for the still because there was an indication there must be a still there, because I first saw the mash barrels. But the

(Testimony of Bruce B. Awrey.)

other violations were found afterwards in a continued search for distilled spirits.

Q. Now, you say you placed Mr. Ramsey under arrest? A. That's right.

Q. Just how long had you been on the premises when you [39] placed him under arrest?

A. Oh, maybe 45 minutes, half an hour to 45 minutes.

Q. What did you say to him when you placed him under arrest?

A. I placed him under arrest for the possession of tax unpaid distilled sprits.

Q. You told that to him in those words? Or did you say nothing to him and say, "You are under arrest"?

A. No, I made the statement to the fact why he was under arrest.

Q. Just where were you when you made that statement to him?

A. That was on the outside of the garage in which we found the distilled spirits—in front of it.

The Court: Did you make the arrest before you found the distilled spirits, or afterwards?

The Witness: After we found the distilled spirits, Mr. Ramsey was standing in front of this garage.

The Court: Then you made the arrest?

The Witness: Then I went out and placed him under arrest.

Q. (By Mr. Lavine): What did you say to him

(Testimony of Bruce B. Awrey.)

at the time that you made the arrest, if you said anything?

A. There wasn't very much to say, outside of a little later—— [40]

Q. No, at that time. Tell us the words that you used, if any at all.

A. I went on in. That was sufficient. He was under arrest. And other investigators were there.

Q. Was that what you said to him? "You are under arrest."

A. "For the possession of un-tax-paid distilled spirits."

Mr. Lavine: I see.

The Court: Is that what he was put under arrest for?

The Witness: That's right.

The Court: And that is what you told him at that time?

The Witness: That's right.

Q. (By Mr. Lavine): Now, had you or any of the officers left the premises at the time, or rather from the time that you arrived there until you made the arrest of Mr. Ramsey?

A. Nobody left the premises that I know of.

Q. Did you at that time taste any of this substance in this bottle prior to making the arrest?

A. I did. I smelled and tasted from the one gallon bottle.

Q. And what was the color of the bottle?

A. It was a plain bottle with a colored liquor in it.

A. Oh, let's see. We reached there at 12:20 and at least two hours—well, we will say about two hours.

Q. And you say you placed him under arrest about 45 minutes, which would be about 1:00 o'clock? A. Or a little bit before 1:00.

Q. Then you continued your search after that time until about 2:00 or 2:30? [42]

A. It took some time to destroy the barrels and the paraphernalia that had been found.

Q. I see. Now, you said that you found a coil in a barrel. Where did you find that coil?
(Testimony of Bruce B. Awrey.)

Q. Was it white or brown or red, or what was the color? [41]

The Court: The liquor or the bottle?

Mr. Lavine: The liquor, the alleged liquor.

The Witness: The liquor was a light brown.

Q. (By Mr. Lavine): And was it on the basis of your having tasted this substance that you made the arrest?

A. On the basis of the smell and the taste, that is why I placed him under arrest.

Q. I see. Now, how much of this substance did you taste? A. Did I taste?

Q. Yes. A. In my mouth?

Q. Yes. A. Oh, enough to taste.

Q. Well, would you say——

A. We'll say a half a spoonful.

Q. Now, after you placed him under arrest how long did you continue to remain on the premises?

(Testimony of Bruce B. Awrey.)

A. That was in the second shed, or the third building back of the little house.

Q. And that was not in operation, was it?

A. That's right. It was dry.

Q. And when you talked to the defendant about the sugar that was on the premises, he told you that came from a restaurant that he had, didn't he, in words and substance?

A. I had no conversation with the defendant about that sugar.

Q. Did he not tell you that he had been operating a restaurant?

A. During the conversation he did state something about running a restaurant but——

Q. And doesn't that refresh your recollection now that he told you that the sugar came from the restaurant? A. He didn't tell me that.

Q. I see. Now——

The Court: Did he tell anybody within your hearing?

The Witness: He did not, sir.

Q. (By Mr. Lavine): In your earlier testimony you also said that there had to be, in connection with a still there [43] had to be a burner placed under a pot. Is that correct?

A. There has to be some heat, a fire of some kind, yes.

Q. You at no time saw any burner placed under a pot there in operation, did you?

A. I never saw it burning.

The Court: Did you locate the burner?

(Testimony of Bruce B. Awrey.)

The Witness: The burner was located.

The Court: Talk to the jury so they can hear you.

Did you ever find a burner?

The Witness: The burner was a part of the platform that we found in the back room there.

The Court: But not in any way connected with the still?

The Witness: It was not connected.

The Court: And, as a matter of fact, this so-called still was in a crate, wasn't it?

The Witness: That's right.

The Court: And it was boxed up, wasn't it?

The Witness: You are right.

The Court: Well now, what part of the still was in the crate? All of it or just part of it?

The Witness: The still pot alone.

The Court: The still pot?

The Witness: That's right.

Q. (By Mr. Lavine): Did you determine in any way whether [44] the substance that you tasted came from the apparatus that you assembled?

The Court: You can answer that yes or no.

Mr. Lavine: That's right, he can answer it yes or no.

The Witness: Yes.

The Court: How can you determine then that the contents in the bottle came from the apparatus?

The Witness: A still of that type is capable of making a liquid very similar to what I tasted. With an aging process between it could be the same liquor.

(Testimony of Bruce B. Awrey.)

The Court: Well, you say "it could be." But you said before definitely it was. Where is your——

The Witness: It is possible that it could be, and that's as near as I can come to it, that that liquor I tasted could have been made in that particular kind of a still. There is no question in my mind, as far as that goes, with the aging in between.

The Court: Just a minute.

Mr. Lavine: I object to that. There was no question.

The Court: That last part may go out.

Q. (By Mr. Lavine): Now, what was the age of the liquor that you tasted?

The Court: Just a minute, Mr. Lavine. Can you tell the age of liquor by tasting it?

The Witness: You can't determine the age by tasting. [45] You can guess at it. And that is about all you can do on the age of liquor.

The Court: Do you want his guess?

Mr. Lavine: No, I don't want a guess.

The Witness: But I would say that is not old liquor.

Q. (By Mr. Lavine): Well, if you could tell it wasn't old liquor from tasting a half spoonful—is that your testimony?

A. I can tell the difference between moonshine liquor and legally manufactured liquor.

Q. You mean you can tell the difference between liquor that comes in a bottle and has a stamp on it and liquor that hasn't a stamp on it?

(Testimony of Bruce B. Awrey.)

A. And bootleg liquor, I can tell the difference, yes, sir.

Q. How long does liquor age in a bonded warehouse?

A. It's allowed to be sold after four years' aging, and it ages up from that time on.

Q. Eight, 12, is that right?

A. It is usually sold before it gets that old.

Q. Well, what is the difference between liquor that has a stamp on it and liquor that hasn't got a stamp on it that is four years old? Any difference?

A. One shows a tax payment and the other doesn't.

Q. You can tell that by the taste, can you? [46]

A. You can tell it is liquor by the taste rather than bootleg because the bootleg liquor has a different flavor entirely. They can't get rid of the mash smell odor, or the taste. There is a taste of mash in the liquor.

Q. Well now, isn't it a fact that the taste of the liquor comes from the source from which it comes, whether it comes from a certain type of grain? Isn't that what gives it its taste?

A. There are very few—no, not always that way. It is the way it's been distilled, and by the kind of still it has gone through.

Q. Well, is there any difference in the aging of whiskey in Kentucky than in some other states?

A. I have never been in Kentucky.

Q. You are an expert on whiskey.

The Court: Well, he testified only as to what

(Testimony of Bruce B. Awrey.)

he knows from his past experience. He can't testify what happened in Kentucky.

Mr. Lavine: He can testify about whiskey.

Q. (By Mr. Lavine): Isn't it a fact that the taste and the color of whiskey depends upon the source from which it comes and the climatic conditions under which it is aged? Isn't that a fact? Or do you know? If you don't know just say so.

A. That is a pretty broad question. [47]

The Court: May I ask a question of this witness?

Is there any difference in the taste between Old Taylor and Three Roses?

The Witness: Not very much.

The Court: Or Old Grandad? Why do you buy Old Taylor and pay more for it if there isn't a difference in taste?

The Witness: I couldn't answer that. I am not a whiskey buyer.

The Court: You are an expert on whiskey here. Of course I am not buying whiskey, but I would like to know what is the difference in taste between whiskies. There is a difference in taste between Scotch and Bourbon, is there?

The Witness: That is the process of the manufacturer.

The Court: What are they made out of? Are they made from the same thing?

The Witness: Scotch is a special whiskey that has a different sort of aging or flavoring.

The Court: Well, my understanding a little

(Testimony of Bruce B. Awrey.)

while ago was that whiskey can be made out of anything and regardless of what it is made out of it tastes about the same. Isn't that what you said?

The Witness: Not exactly, sir. You can't always tell what whiskey was made of. And I was referring to bootleg whiskey. But if it is manufactured in the ordinary bootleg manner there is a distinctive odor to that and a taste that [48] is very familiar to a man that has handled a lot of it.

The Court: Then you are able to tell the difference between bootleg liquor and liquor made in a regular distillery, is that correct?

The Witness: That is correct.

Q. (By Mr. Lavine): Don't they both have to use the same distilling process?

A. They don't use the same distilling process. That is why there is a difference in the flavor and a difference in the taste. In a large still there's—the croton oil is taken off by a process of pipes and it is an entirely different way of making it that gives it a different flavor.

Q. Well now, if the substance is run through a still two or three times is not the croton oil removed just the same in a small still as a big still?

A. The croton oil would be removed and you would probably have pure alcohol instead of whiskey because the water would go with the croton oil. If you would put it through a still three or four times you would have alcohol; you wouldn't have whiskey.

(Testimony of Bruce B. Awrey.)

Q. Well, have you ever run a distillate through a still three or four times yourself?

A. My experience is that that would be——

Q. Just answer that yes or no.

A. No, I haven't. [49]

Mr. Lavine: All right. That is all.

Redirect Examination

By Mr. Bender:

Q. Mr. Awrey, were there any strips on any of these jugs or bottles that you found on the Ramsey premises on September 15, 1955?

A. I didn't see all of them, but those that I did look at had no strip stamps.

Mr. Lavine: What was that?

Mr. Bender: He said he didn't see all of them but the jugs he did see had no strip stamps on them.

The Witness: That's right.

Mr. Bender: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Bender: The Government calls James Coughran.

JAMES H. COUGHRAN

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your name for the court, please.

The Witness: James H. Coughran, C-o-u-g-h-r-a-n.

The Clerk: And your address?

The Witness: 1304 Ferndale Street, Anaheim, California. [50]

Direct Examination

By Mr. Bender:

Q. Mr. Coughran, what is your profession?

A. I am a criminal investigator for the Alcohol & Tobacco Tax Branch of the Bureau of Internal Revenue.

Q. Directing your attention to September 15, 1955, what did you observe on that date with reference to this case?

A. Well, at approximately 12:15 p.m., Investigator Travis and myself were in position on West 223rd Street in Torrance, California, and were joined by Investigators Warner, Awrey and Jones.

We proceeded directly to the premises at 1011, 1011½ West 223rd Street. I was driving one vehicle with Investigator Jones and Investigator Travis as passengers. Investigator Warner drove the other vehicle with Investigator Awrey as a passenger.

Q. Where did you go?

(Testimony of James H. Coughran.)

A. We went to the premises at 1011, 1011½ West 223rd Street.

Q. What did you do there?

A. Well, we entered—I entered the west driveway. There are two driveways on the enclosure, which is approximately one to one and a half acres enclosed by a fence. There is a large residence and a small residence. There [51] is a driveway to the east side of the residence and a driveway to the west side of the large residence. We entered the left or west driveway and parked the vehicle in the driveway as the other vehicle entered the east driveway. At that time I observed Investigator Warner and Investigator Awrey approach the defendant in the front yard. And they had some conversation with him. I saw a paper handed to him.

I remained in position while the three—that is, Investigators Warner, Awrey and the defendant—went into the large residence. And a short time after that I went into the residence through the back door. At that time the defendant and two ladies were in the house. One lady was identified by the defendant as his wife; the other as his mother. There was also a colored maid on somewhat of a service porch.

I remained with the defendant, his mother and his wife and the maid in the house while the search was carried on.

A short time after that Investigator Travis returned to the house. He came to the area where

(Testimony of James H. Coughran.)

the defendant was and requested the keys for the out buildings.

Q. Was this in the presence of the defendant?

A. Yes, sir. He was speaking directly to the defendant.

Q. In other words, the request was directed to the defendant? [52] A. Yes, sir.

Q. What did the defendant say?

A. The defendant made no comment at all or no effort to obtain the keys. Investigator Travis then explained to him that he needed the keys in order not to have to tear up his property. And at that time I told Investigator Travis, still in the presence of the accused, to go ahead and knock the locks off. At that time the defendant got up and produced the keys out of a pocket of a pair of overalls he was wearing.

I then took the defendant to the shed which is directly behind the small residence near the west fence of the enclosure, and he opened a door on a building that had been previously used as a garage, sometime or other as a garage, because it had double doors.

The Court: Who opened it?

The Witness: The defendant.

The Court: The defendant?

The Witness: Yes, sir. As he opened the door I could see in there, and I saw two five-gallon bottles of a liquid resembling whiskey, and some cases; also two 55-gallon oak kegs laying on their side

(Testimony of James H. Coughran.)

with an attachment into the drums that were strange to me at the time. There was a gas connection to this attachment.

I then began an inventory of the liquor in that shed. [53]

Mr. Lavine: I move to strike the word "liquor" the the witness' conclusion.

The Court: Substitute the word "liquid" for "liquor" and the objection is overruled.

The Witness: I found approximately 16 gallons of the liquid in one of the oak kegs. I say approximately 16 gallons because I drew off one gallon, the first gallon I drew off, into a one-gallon jug that I found empty there, and I did this by means of a siphon, a small hose that I converted into a siphon. And at the time I drew off this one gallon, which was the first gallon I drew out, Investigators Warner and Jones were with me. We placed—we marked this one gallon that we took out of the rectifying still, the oak barrels, and marked it with a diamond ring that belongs to Mr. Warner. And we took one jug——

Q. (By Mr. Bender): What part of the jug did you mark with the diamond ring?

A. The glass portion of the jug.

Q. Scratched it in the glass with the ring?

A. Yes. And we took one jug from the cases that we found on the floor and marked that also.

Q. Did each of these jugs, after you marked them, contain a liquid?

A. They contained a liquid.

(Testimony of James H. Coughran.)

Mr. Bender: May these be marked for identification? [54]

The Court: They may be marked as Government's Exhibits 1 and 2 for identification.

Mr. Bender: Thank you.

The Clerk: Shall I mark both jugs as one exhibit?

The Court: 1 and 2.

The Clerk: Government's Exhibits 1 and 2 marked for identification.

(The exhibits referred to were marked Plaintiff's Exhibits 1 and 2 for identification.)

Mr. Bender: Would you place Government's Exhibits Nos. 1 and 2 before the witness, please?

(Whereupon the two exhibits were placed before the witness.)

Q. (By Mr. Bender): Mr. Coughran, would you inspect Government's Exhibits 1 and 2 for identification?

A. Yes, sir; these are the——

Q. You have inspected them?

A. Yes, sir.

Q. Where did you first see those jugs?

A. This one which is marked "cases" I first saw in the cardboard cases sitting in this garage that the defendant opened for us at the time of the search of the premises at 1011-1011½ West 223rd Street.

(Testimony of James H. Coughran.)

Q. At the time that you first saw it did it contain the dark brown liquid? [55]

A. The same substance that it contains now.

Q. Did it have a strip stamp on it?

A. No.

Q. Is that Government's Exhibit 1 for identification?

A. This is Government's Exhibit No. 2.

Q. When is the first time that you saw Government's Exhibit 1 for identification?

A. I saw the jug at the same place that I found this. However, at the time I saw it the jug was empty.

Q. You say you saw the jug at the same time you saw Government's Exhibit 2?

A. And the same place.

Q. Yes. What did you do?

A. This jug was empty originally.

Q. By "this" you mean Government's Exhibit 1 for identification——

A. Right, sir.

Q. ——for the record.

A. The substance in this jug I drew out of a 55 or 50-gallon oak barrel by means of a siphon and placed it in this jug.

Q. Where was this barrel that you siphoned from?

A. It was in the back of the shed at the same place I found this (indicating).

Q. Was that on the premises located at 1011 or 1011½ [56] West 223rd Street?

A. Yes, it was.

(Testimony of James H. Coughran.)

Q. Did you mark either of the Government's Exhibits for identification?

A. Mark them? No, sir. I put my initials on them. Investigator Warner marked them and I put my initials on them after he marked them. And so did Investigator Jones.

Q. At the Ramsey premises? A. Yes.

Q. What was then done with the two exhibits for identification?

A. Investigator Jones put them in the trunk of his car.

Q. Did you have any conversation with the defendant, or did you hear any conversation in the presence of the defendant on this occasion, on this date?

The Court: Well, he testified as to the keys. Other than the keys?

Q. (By Mr. Bender): I mean other than the key conversation, was there any conversation?

Excuse me. Have you answered the question?

A. No, sir, I haven't. I am sorry. You mean at the time we obtained these samples?

Q. I mean at any time either before or after you obtained the samples.

A. Well, during—shortly after we opened the garage [57] and I had gone inside, attempting to find a hose to make a siphon, Investigator Warner was discussing the substance with the defendant and the defendant volunteered the information that this was very good material and that there was no

(Testimony of James H. Coughran.)

headaches in this. And I don't remember the exact words. This is the gist of the conversation.

Q. How many gallons did you draw out of the barrel?

A. I drew out one five-gallon jug. I believe there was a total of $9\frac{1}{2}$ or 10 gallons. I had no further jugs. Investigator Warner asked the defendant if he had any more jugs and the defendant said yes, he had some more on the back porch but they were filled with water. And so he asked the defendant how much was in the barrel to start with and the defendant stated approximately 16 or 17 gallons. So we estimated the amount in the barrel as 16 gallons. And inasmuch as I couldn't draw it all off we destroyed the barrel and let the liquor run out on the ground.

Q. And what was the total number of gallons of liquid that you found on the premises that in your opinion resembled whiskey?

A. 40 gallons.

Mr. Bender: You may cross-examine.

The Court: Mr. Lavine, before you start your cross-examination maybe we had better take our afternoon recess.

Ladies and gentlemen of the jury, we are about to take [58] another recess. Again it is my duty to admonish you not to discuss this case with anyone or to allow anyone to discuss it with you; not to formulate or express any opinion on the rights of the parties until this case has been finally submitted to you.

(Testimony of James H. Coughran.)

With that admonition we will now recess until 3:00 o'clock.

(Short recess.)

The Court: Is it stipulated that the jury is present and in the box?

Mr. Bender: So stipulated, your Honor.

Mr. Lavine: So stipulated, your Honor.

Mr. Bender: Your Honor, the Government has a few more questions that I would like to ask of this witness on direct examination.

The Court: You may proceed.

Q. (By Mr. Bender): Mr. Coughran, directing your attention again to this September 15, 1955, date and the Ramsey premises, did you make an inventory of the material which you found there?

A. I did, sir.

Q. Would you describe for us what you found and what your inventory——

The Court: Isn't the inventory upon the back of the search warrant? Is there any dispute as to that? [59]

Mr. Lavine: No, your Honor.

Mr. Bender: But there were a few other items found on the premises which we considered to be material.

The Court: All right.

The Witness: As well as I remember, we found this 100-gallon pot, copper pot. We found a metal drum, approximately 25 gallons, with a three-

(Testimony of James H. Coughran.)

quarter - inch copper coil inside. We found 550 pounds of corn sugar. We found——

Q. (By Mr. Bender): Was that 550 pounds?

A. 550. That is an estimate.

Mr. Lavine: If your Honor please, this witness keeps saying “we.” I can’t tell whether he found it or somebody else found it, or whether he is giving what somebody else did as his evidence here.

The Court: The question is what you found.

As long as you have been interrupted, what is the difference between corn sugar and regular sugar, cane sugar?

The Witness: Sir, corn sugar is a product derived exclusively of corn.

The Court: Can you tell the difference by looking at it?

The Witness: Not very easily, no, sir. The difference—I couldn’t tell the difference by looking at it other than the labels on the side.

The Court: The labels? [60]

The Witness: Yes, sir.

The Court: On the side?

The Witness: Yes, sir.

Q. (By Mr. Bender): What else did you find?

A. This is the inventory I took of the property?

Q. Yes.

Mr. Lavine: I object to what inventory he took. What he found himself is, I think, relevant.

The Court: The question is, what did you find?

Mr. Bender: I think it was material that was on the premises and he compiled an inventory.

(Testimony of James H. Coughran.)

The Court: If he wants to he can read the inventory.

Q. (By Mr. Bender): Do you have an inventory with you?

A. Not with me. I have one.

Mr. Lavine: If your Honor please, I respectfully would object to his reading an inventory of what somebody else did, unless it was something that he personally did.

The Court: You told me you had no objection to the articles listed on the inventory.

Mr. Lavine: No, your Honor, I have no objection to the articles on the inventory, subject to my basic objection which your Honor has which was made before the jury was impaneled.

The Court: Let's put the question this way: What else did you find other than what is on the inventory? [61]

Mr. Bender: I think everything is on the inventory.

The Court: Then the inventory speaks for itself.

Q. (By Mr. Bender): Did you prepare an inventory? A. Yes, sir, I did.

Q. What was contained upon the inventory other than what you have stated?

The Court: Well, I think the inventory is the best evidence. He says he prepared it.

Mr. Bender: All right, your Honor. I will withdraw the question and approach it from this aspect:

Q. (By Mr. Bender): Mr. Coughran, what ma-

(Testimony of James H. Coughran.)

terials did you observe on the premises, the Ramsey premises on September 15, 1955?

A. I observed 550 pounds of corn sugar, five gallons of malt, two thermometers, one hydrometer, one hundred-gallon pot, a worm that I have previously described, a mash pump—it was a brass mash pump approximately one-half inch centrifugal pump—powered by a one-sixth horsepower electric motor.

Mr. Lavine: I object to the last part as being a conclusion of the witness, your Honor.

The Court: How do you know it was powered by——

The Witness: An electrical pump put out by General Electric. It has a brass plate on it that says the horsepower. I took it from that plate. [62]

The Court: All right.

The Witness: There was 100 feet, approximately 100 feet of heavy rubber hose.

It is difficult to recall exactly what was on the inventory, because there were so many items. There were these two aging barrels that I have previously described, oak barrels, approximately 50 gallons. There was a total of 26 oak barrels on the premises.

Q. (By Mr. Bender): And what was done with the material that you have described, other than the Government Exhibits for Identification Nos. 1 and 2?

A. It was destroyed on the premises, sir.

Q. Approximately what time was it destroyed?

A. Well, they took—it took approximately 45

(Testimony of James H. Coughran.)

minutes to an hour to destroy the items found. I will say between 2:00 and 3:00, probably.

Mr. Bender: You may cross-examine.

Cross-Examination

By Mr. Lavine:

Q. What is the difference between corn sugar and dextrose sugar?

A. Dextrose sugar, as I understand it, sir, is a trade name applied to a certain type of corn sugar.

Q. What you saw in these bags was "dextrose sugar," wasn't it, and not corn sugar, on the [63] label?

A. It says "dextrose sugar," a corn product manufactured by Corn Products.

Q. Manufactured by Corn Products, isn't that right?

A. Right, sir.

Q. It did not say "corn sugar" on the label?

A. Specifically, no, sir. However, that's what the Corn Products manufacture their sugar out of is corn.

Mr. Lavine: I move to strike the last part as a conclusion of this witness; no foundation laid.

The Court: It may go out.

Q. (By Mr. Lavine): Now, this motor that you described that was one-sixth horsepower——

A. It stated that on the plate affixed to the motor, yes, sir.

Q. Now, as a matter of fact, you didn't see any of these in operation, did you?

(Testimony of James H. Coughran.)

A. No, sir, I did not.

Q. And you did not see any of those things put together, the copper worm or the brass pump or any of that put together in operation, did you?

A. Put together in operation? In operation, no, sir. It was put together by Mr. Awrey. He assembled it.

Q. Did he take the pot out of the crate in which it was located?

A. Yes, sir, he did. [64]

Q. And it was in a wooden crate, was it not?

A. An open crate, yes, sir.

Q. And did you help him take it out of the crate? A. I did not, sir.

Q. Did you help him assemble any part of it?

A. I did not, sir.

Q. Did you ever see any of this apparatus in operation? A. In operation? No, sir.

Q. And after he assembled it you never saw it in operation, did you? A. I did not, sir.

Q. Now, you said that you took these two jugs, and one of them was filled and one of them was empty at the time that you picked them up, is that right?

A. Government's Exhibit No. 2 was full as it is now, with the exception of the sample which we drew off; and Government's Exhibit No. 1 was an empty jug and the substance in it came out of the rectifying still, yes, sir.

The Court: Just a minute. It came out of the

(Testimony of James H. Coughran.)

rectifying still or out of a barrel? I thought you testified you took it out of a barrel.

The Witness: I am sorry, sir. It is an oak barrel. However, it is set up as a rectifying still for aging process.

The Court: Now you are over our heads. You must remember we have a jury who don't know anything about that at [65] all. You testified that it was a barrel and now that it was a rectifying still. I don't know what that is. Did you get the liquid out of the barrel?

The Witness: A 50-gallon oak barrel.

The Court: That is what I thought you testified to.

Q. (By Mr. Lavine): Where was this 50-gallon oak barrel?

A. In the rear of the building that I described before that has sometime or other been used as a garage. It's directly behind the small residence on the premises.

The Court: You say it was in the rear of the building. Do you mean on the outside of the building or the rear part of the building?

The Witness: To the rear of the building, sir, a separate and distinct building.

The Court: Was it in the building?

The Witness: Separate from the small house, in the building.

The Court: In the building?

The Witness: In the back.

The Court: Then it wasn't to the rear?

(Testimony of James H. Coughran.)

The Witness: To the rear of the small residence, sir.

The Court: All right.

Q. (By Mr. Lavine): Now, it wasn't in 1011 or 1011½ - 223rd Street, was it? It wasn't in either one of those houses, was it? [66]

A. At the address, yes, sir. It was on the premises there.

Q. It was not in either of the two houses, was it? A. Living quarters, no, sir.

Q. Well, the address that you got the search warrant for—did you get the search warrant?

A. No, sir.

Q. Did you have a copy of the search warrant at the time? A. No, sir.

Q. Did you ever see the search warrant while you were on the premises, or before you went on the premises? A. No, sir.

Q. This building that you went into and took this jug out of and drew the other bottle out of, that came from a garage in the rear and not in 1011 and 1011½ - 223rd Street, isn't that right?

A. Not in the dwelling portions, no, sir.

Q. How far was this garage from the house?

A. From the small house, approximately—as near as I can estimate, approximately 20 feet.

Q. And it was locked, was it?

A. At first, yes, sir.

Q. And you or your fellow officer asked the defendant for the keys to this garage, did you? [67]

A. Yes, sir.

(Testimony of James H. Coughran.)

Q. Did you ask him for it?

A. For the keys?

Q. Yes. A. No, sir.

Q. Who did ask for it?

A. Investigator Travis.

Q. What did the defendant say?

A. He didn't answer at first.

Q. He did not answer? A. No, sir.

Q. And then you told him you would have to break it down unless he gave him the keys, didn't you?

A. No, sir, I did not. Investigator Travis.

Q. In your presence and hearing?

A. Yes, sir.

Q. And in the presence and hearing of the defendant? A. Yes, sir.

Q. And then the defendant took the keys out of his pocket, is that correct?

A. That is correct, sir.

Q. And was the defendant under arrest at that time? A. He was not, sir.

Q. Did you then take him out to this garage?

A. Yes, sir. [68]

Q. And did you place him under arrest at that time?

A. I never arrested the defendant, no, sir.

Q. Now, you and—what was the other officer's name that went to the garage?

A. I took the defendant myself to the garage.

Q. Were you armed at the time?

A. I certainly was, yes, sir.

(Testimony of James H. Coughran.)

Q. And then the defendant opened the garages after you took him there after this conversation with your fellow officer, is that correct?

A. That is correct, sir.

Q. Now, did you destroy all of the other liquor that was on the premises except these two jugs?

A. As far as I know, yes, sir.

Q. And were you the one who did the destroying?

A. I assisted in the destruction.

Q. And you saw everything destroyed as you listed on your inventory except these two jugs, is that correct?

A. No, sir, I did not see it all destroyed. It would have been impossible. There were five of us working. I couldn't see everything destroyed at one time.

Q. Did you talk to the other officers after the destruction and while you were making up your inventory to give to the defendant?

A. The inventory was made prior to the [69] destruction.

Q. Well, in your inventory you say the 38 gallons of whiskey was destroyed, didn't you?

A. That's right, sir.

Q. And there were only 40 gallons in the barrels, isn't that right?

A. Right.

Q. Did anybody else mark any of these bottles?

A. Yes, sir.

Q. Who else marked any of the bottles?

A. Investigator Linder marked two bottles on

(Testimony of James H. Coughran.)

the cap after he arrived, which was, oh, probably 2:00 o'clock, nearly 2:00 o'clock when he arrived.

Q. Did you destroy those two bottles?

A. I don't remember what happened to those two bottles. I suppose they were destroyed with the rest of them.

Q. Isn't it a fact that those two bottles were the bottles that were marked for evidence for you to bring in? A. No, sir, it is not.

Q. And isn't it a fact that these two bottles are bottles that you got somewhere else prior to this trial? A. No, sir, it is not.

Q. Is the same substance in each of these two bottles, the same type of whiskey?

A. As far as I know. The chemical analysis states they are the same. [70]

Q. Do you know anything about whether that is local whiskey or whether it came from a foreign country?

A. The first time I ever saw this whiskey was at the premises at 1011 and 1011½ West 223rd Street.

Q. Did you ever see any whiskey similar to that prior to and on the 15th of September?

A. On the 15th of September did I see whiskey similar to this?

Q. Yes.

A. Well, only this batch that we are speaking of right now.

Q. I see. And you never at any time ever saw any other whiskey of that same character?

(Testimony of James H. Coughran.)

A. Oh, many times, sir.

Q. Well, of the same quality and the same grade?

A. I couldn't say as to that, sir. I know nothing of the quality or the grade of the whiskey.

Q. You didn't taste that, did you?

A. Taste this? No, sir, I smelled it, but I didn't taste it.

Q. I see. Who was in charge of this investigation on this September 15th?

A. In charge of the investigation?

Q. Yes.

A. Or do you mean the searching of the premises? The [71] investigation has been going on for a year or more.

Q. I am talking about the search of the premises.

Mr. Lavine: I move to strike the former answer.

The Court: It may go out.

Mr. Bender: We object and move that it stay in on the grounds that counsel asked that question.

The Court: It may go out.

Mr. Lavine: Would you read my last question, please?

(Question read.)

The Witness: The search of the premises was originally under the control of Investigator Bruce Awrey. However, our group leader, Investigator Linder, arrived later. Whether he assumed control I do not know. I know that the original search began under the direction of Mr. Awrey.

(Testimony of James H. Coughran.)

Q. (By Mr. Lavine): Who directed the taking of certain of this evidence that you have before you?

A. No one directed this, sir. It's normal procedure to always obtain samples. That is the first thing that is done.

Q. Was this your own idea or some other officer's idea when you were on the premises?

A. I suppose it was all of our idea. You always do that when you make an investigation and find something like this. You find a sample.

Q. What I am trying to determine is who decided how much was to be destroyed and how much was to be preserved, [72] as evidence, on September 15th?

A. Well, I suppose it was a group decision, Investigator Warner, myself and Investigator Jones. We were all present at the time the samples were taken.

Q. Who would direct putting any initials on any caps of any bottles?

A. Mr. Linder might. He put his initials on, as far as I know, scratched something on it.

Q. Then wouldn't those bottles be taken in as the evidence?

A. I am in no position to question Mr. Linder, what he does.

Q. Well now, in your inventory you first listed that 40 gallons was destroyed and then you scratched out the "40." When did you do that?

A. At the time the inventory was taken, I suppose. I don't recall scratching it out.

(Testimony of James H. Coughran.)

Mr. Lavine: May I approach the witness, your Honor?

The Court: Yes.

Q. (By Mr. Lavine): I will show you this inventory and ask you if that refreshes your recollection?

A. No, sir, it does not. I did not make this inventory.

Q. You did not make this inventory?

A. No, sir. [73]

Q. Is this in your handwriting?

A. No, sir, it is not.

Q. Who made this copy?

A. Investigator Warner.

Q. Did you make a similar copy?

A. Yes, sir.

Q. And is this not a carbon copy of the original that you made? A. No, sir, it is not.

Q. That's all in Mr. Warner's handwriting, is that correct? A. That is correct, sir.

Q. Well, did you tell Mr. Warner what you were taking and what was being destroyed?

A. No, sir. I recall that the original inventory—

Q. You have answered my question. You didn't do that. You didn't call off what was being destroyed and what was being kept?

A. As far as calling it off, no, sir, I did not.

Q. Now, you said that you drew off one of these bottles from this barrel?

A. That is correct, sir.

(Testimony of James H. Coughran.)

Q. Just where was this barrel in relation to where you drew it off? What part of the garage was it in?

A. Well, the garage, which was a very small one, [74] approximately 9 by 17 or 18 feet, faced the east. This barrel was in the southwest corner of the garage.

Q. Did you go back to the premises that afternoon after you left? A. I did, sir.

Q. You went back in search of two bottles, didn't you? A. Yes, sir.

Q. And you say you had these two bottles already?

A. Investigator Jones had these bottles.

Q. And you went back for two more bottles?

A. That's right, sir.

Q. Did you find those two bottles there?

A. No, sir, we did not.

Q. Those were the two bottles that were actually taken by Mr. Linder, isn't that right?

A. I couldn't say. I was told to go back because I had to pick up an automobile, and I accompanied Investigator Warner.

Q. You were told to pick up two bottles?

A. I was not told to pick up anything.

Q. That is what you went back to look for, wasn't it? A. Yes, sir.

Q. And you didn't find any bottles there?

A. No, sir.

Q. And you were told that those bottles had caps with [75] identification on them, weren't you?

(Testimony of James H. Coughran.)

A. I may have been. I don't remember anything about the caps.

Q. Well, how long did you stay when you went back there?

A. Oh, three minutes, four maybe—no longer than five.

Q. Did you go back into the garage again?

A. Went back into that one garage, yes, sir.

Q. Didn't you at that time tell the defendant that the investigators had left the two bottles there in their hurry to get away and had forgotten about it?

A. No, sir. I told the defendant nothing. I had no conversation with the defendant at that time.

Q. Did you tell anyone on the premises that?

A. I had no conversation with anyone on the premises.

Q. What time in the afternoon did you get back to the place?

A. It was late in the afternoon.

The Court: May I ask a question?

If nobody told you to look for two bottles, how did you know there were two bottles missing?

The Witness: Because I heard some discussion between the investigators in the office after we returned as to the bottles that Mr. Linder had marked. Then I remembered seeing Mr. Linder with a couple of bottles. They were set with the [76] others. I don't know if they were destroyed or what happened to those two bottles.

Q. (By Mr. Lavine): You say you went back later in the afternoon. About what time was it?

(Testimony of James H. Coughran.)

A. I don't recall accurately; probably between 6:30 and 7:00.

Q. You had already been back down to the Federal Building, hadn't you? You had come back, hadn't you?

A. No, sir, I didn't go to the Federal Building.

Q. Do you have a separate office for the Alcohol Tax Division? A. Yes, sir. On Hill Street.

Q. Did you go back to your offices on Hill Street?

A. No, sir, I did not. I went to the Forestry Service Garage to turn in a car.

Q. What time do you normally finish your work day? A. Normally at 4:30, sir.

Q. And what time did you finally get back from the Ramsey premises that night?

A. I arrived at home probably around 8:00 o'clock. But that made about 40 hours that I had been on duty.

Mr. Lavine: That is all, your Honor.

Redirect Examination

By Mr. Bender:

Q. Mr. Coughran, did you see Investigator [77] Linder take the samples?

A. Take the samples?

Q. Yes. Did you see him? A. No, sir.

Q. Was Investigator Linder there when you took Government's Exhibits Nos. 1 and 2 for identification?

(Testimony of James H. Coughran.)

A. No, sir. That was prior to the time that he came.

Q. At any time on September 15, 1955, did you have any conversation with Investigator Linder concerning the samples which you had taken?

A. Yes.

Q. When did you have this conversation?

A. It was when I returned from down at Torrance.

Q. What time?

A. It was roughly 4:00 or 4:30, I think, after he came back from the Commissioner's office.

Q. After the destruction of the material found on the Ramsey premises? A. Yes.

Recross-Examination

By Mr. Lavine:

Q. Officer Linder was there right from the beginning of your investigation, wasn't he?

A. No, sir, he was not.

Q. He was there during your investigation? [78]

A. He arrived roughly at 2:00 o'clock. I don't recall exactly when he came.

Mr. Lavine: That is all.

The Court: You may step down.

(Witness excused.)

The Court: You may call your next witness.

Mr. Bender: The Government calls Howard C. Bumpass.

HOWARD C. BUMPASS

called as a witness on behalf of the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your name in full.

The Witness: Howard C. Bumpass.

The Clerk: And your address?

The Witness: 1708 Comino De La Costa, Redondo.

Mr. Bender: Would you speak up, please?

Direct Examination

By Mr. Bender:

Q. What is your profession or occupation?

A. I am a grocer.

Q. Where are you employed as a grocer?

A. I own the grocery at 1643 West Carson in Los Angeles, which is surrounded by Torrance.

Q. For how long have you owned this grocery store?

A. Approximately two and a half years.

Q. What is the name of it? [79]

A. B & B Market.

Q. Are you acquainted with the defendant?

A. I am.

Q. For how long have you been acquainted with the defendant?

A. Oh, approximately the length of time I have been in the store.

Q. Directing your attention to the early part of 1955, did you have any conversation with the defendant concerning the Peerless Yeast Company?

(Testimony of Howard C. Bumpass.)

Mr. Lavine: I object to the question as being irrelevant and immaterial; not within the issues of this case.

The Court: I don't know whether it is or not. Overruled. You can answer that yes or no.

The Witness: I don't remember whether the Peerless Yeast Company was mentioned or not.

Q. (By Mr. Bender): Did you have any conversation with the defendant? A. Yes.

Q. When and where did this conversation occur?

A. It took place at my store. As to the date, I don't recall.

Q. Approximately what time, what part of the year, then?

A. It was the early part of the year. [80]

Q. Was anyone present in the immediate conversation besides yourself and the defendant?

A. No.

Q. Would you relate what the conversation was and what was said by each of you?

A. Mr. Ramsey had owned——

Mr. Lavine: I object to that as incompetent, irrelevant and immaterial; not within the issues of this case.

The Court: Overruled.

The Witness: Mr. Ramsey had owned a small restaurant——

Q. (By Mr. Bender): Speak up, please.

A. Mr. Ramsey owned a small restaurant practically a block from the store and he traded with us. And this particular day he approached me and

said—well, this is approximately a week after he sold his restaurant, and he explained to me that he had sold his restaurant but ordered some malt and yeast for his business and wanted to know if he could have it delivered to my premises and then he would pick it up there and reimburse me for what the charge was. And I agreed to——

Q. What did you say to him?

A. I said, “Yes, that would be perfectly all right.”

Q. Did you subsequently have the malt and yeast delivered to your store?

A. Yes. It was delivered to my store and he picked it [81] up.

Q. When it was delivered to your store who paid for it? A. I did.

Q. You paid full price for it at that time?

A. Full wholesale price.

Q. Were you ever reimbursed?

A. By Mr. Ramsey. And I gave him the bill of sale.

Q. When were you reimbursed?

A. I believe it was on the same day it arrived.

Mr. Lavine: I object to that as being incompetent, irrelevant and immaterial; not within the issues of this case.

The Court: Overruled.

Q. (By Mr. Bender): When you were reimbursed did you receive any sum in excess of the amount that you had already paid?

A. None whatsoever.

Q. Did you on any other occasion accept and

(Testimony of Howard C. Bumpass.)

pay for any malt and yeast or any other substance on order by this defendant and at this defendant's request?

A. One other time approximately three months after, I would say, or just previous to the investigation in this case, or the apprehension.

Q. Did you have a conversation with the defendant concerning the second delivery? [82]

A. Not any more than the first.

Q. Did you have a conversation the same as the first?

A. About the same, just the same thing. He said he ordered some more yeast and would it be all right, and I said yes.

Q. Where did the conversation take place and who was present?

A. At the store. I was alone.

Q. Did you in fact then order more yeast and malt? A. I never ordered any, no, sir.

Q. What did you order?

A. I didn't order anything.

Q. What did you then accept on order of the defendant? A. I accepted yeast and malt.

Q. Did you pay for it in the same manner as you paid for the first one? A. Yes.

Q. And did the defendant then later reimburse you in the same manner? A. Yes.

Q. Did you ever at any time make any profit on either of these transactions?

A. None whatsoever.

(Testimony of Howard C. Bumpass.)

The Court: What was the amount of yeast and malt on the first delivery? [83]

The Witness: I believe it was in the neighborhood of about \$40; \$35 or \$40. The exact amount escapes me.

The Court: What poundage?

The Witness: That is something I don't know, either. I don't remember. I believe it was——

Mr. Lavine: I object to the witness' guessing.

The Witness: That is what it would be, a guess.

The Court: All you remember now is that it was about \$35 or \$40?

The Witness: I think so, in wholesale price.

The Court: What was the amount of the second?

The Witness: Approximately the same, I believe.

The Court: Did it come in a big burlap sack or small paper sacks, or what?

The Witness: Portions of it, I believe, was—I recall the barrels. I believe the yeast came in black round containers.

The Court: How big were they?

The Witness: Five gallons or so, I would say. They were approximately 10 inches in diameter; 10 or 15 inches.

The Court: How many barrels?

The Witness: Three barrels.

The Court: In which delivery?

The Witness: Both deliveries. I think they were both the same. I don't recall. [84]

(Testimony of Howard C. Bumpass.)

The Court: That is the yeast. How about the malt?

The Witness: On either occasion I don't believe I actually received it. I believe the manager of the store actually signed for it. I told him it was coming and he signed a receiving slip and paid for it.

The Court: You are the one that delivered it to the defendant. Didn't you deliver it to the defendant?

The Witness: He came to the store and picked it up, and took the bills and from that he reimbursed me.

The Court: I see.

Q. (By Mr. Bender): Did Mr. Ramsey tell his purpose for ordering this? A. He did not.

Q. How was the defendant informed or advised that the shipment, or each of these shipments had been received by yourself?

A. He wasn't. He said he would be back. He was in and out of the store, and he said it was coming in the morning and he would be in sometime during the day and pick it up.

Q. You didn't call him to let him know?

A. No.

Q. Did you place either of these orders with the Peerless Yeast Company? A. I did not. [85]

Mr. Bender: You may cross-examine.

Mr. Lavine: No cross-examine.

The Court: You may step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Bender: The Government calls M. F. Warner as its next witness.

M. F. WARNER

called as a witness on behalf of the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your name in full, please.

The Witness: M. F. Warner.

The Clerk: And your address?

The Witness: 429 Duchess Drive, Whittier.

Direct Examination

By Mr. Bender:

Q. What is your profession or occupation?

A. Investigator for the Alcohol & Tobacco Tax Division of the Internal Revenue Service.

Q. Directing your attention to September 15, 1955, what did you observe on that date with reference to this case?

A. Well, on September 15, 1955, I accompanied Investigator Awrey——

Q. Would you please speak a little louder?

A. ——to the premises of 1011-1011½ West 223rd Street [86] for the purpose of serving a search warrant.

Q. Approximately what time did you arrive, if you did, at the premises on 223rd Street?

A. Approximately 12:20 or 12:30.

Q. By the way, is that located in Hawthorne?

A. Torrance.

(Testimony of M. F. Warner.)

Q. What did you do upon arrival?

A. Investigator Awrey and I drove in the east driveway, which was the driveway to the large house. As we were approaching the front of the house I saw a man in the front yard walking along the fence towards the exit of the east driveway. I approached him and asked him if he lived there and he said, "No, I'm the gardner."

Q. Who was this man that you say you had this conversation with?

A. I identified myself as a Federal officer and asked him his name, and he said Ramsey. At that time I was joined by Investigator Awrey and I told Mr. Awrey that the man was Milton G. Ramsey. Mr. Awrey handed him the search warrant and told him what we were there for and asked him to read the warrant, which he did.

We then entered the large house and commenced our search. Shortly therefater I left the large house and got Investigator Coughran. He returned to the house. And Mr. Awrey had previously left. Then I left and approached a row of sheds [87] just north of a small dwelling house.

Q. Who was with you at the time you approached the sheds? A. I was by myself.

Q. What did you do then?

A. At almost the same time I approached the first shed door I was joined by Investigator Awrey. And from this first shed there was emanating a strong odor of mash or distilled spirits—alcohol. We went to the second door and smelled the same

(Testimony of M. F. Warner.)

odor. Then we went farther north on the premises to the third shed and again smelled this odor. We returned to the first two sheds, where we met Investigator Jones and Investigator Travis. Investigator Travis left to get the defendant to unlock these two sheds.

The defendant returned with Investigator Coughran and unlocked the first shed, and I saw some 50-gallon barrels, a water heater, a pump and a motor and some sacks of sugar.

Then he unlocked the second shed and I saw two 5-gallon jugs containing a brown liquid that had the appearance of whiskey. We went in the shed—by that I mean the defendant, Investigator Awrey, Investigator Coughran, Investigator Jones and myself. Investigator Awrey took a gallon jug out of some cases that contained the same colored liquid, took off the cap, smelled it, tasted it and handed it to each of us. I smelled it and it had the appearance and smell [88] of whiskey. Then I saw two 50-gallon barrels facing each other that had three-quarter-inch pipe coming out of the end of the barrel into a coil and back into the barrel with a small gas burner on the coil.

I then informed Ramsey that—I just said, “Well, I know now why you had such good color to it.”

And he said, “Yes, there are no headaches in that stuff. That’s good stuff.”

I also asked him at that time how long he had been operating—how long this operation had been going on, and he said about two or three months.

(Testimony of M. F. Warner.)

Prior to that—that was after he was arrested. He was arrested before any of this questioning went on. The minute he was arrested and we identified the stuff as to what we thought was whiskey, he says, “This entire operation is mine alone.”

Q. By “he” who do you mean?

A. Mr. Ramsey. He says, “I know what you are going to do, and I want an inventory of everything that you seize or that you destroy or that you take with you.” And he showed us—he showed me a place in the back yard by a pile of rocks where he would like for us to destroy the apparatus, the whiskey and everything else so we wouldn’t muss us his back yard.

He and Mr. Awrey then left to check this other shed, and I remained in this building with Jones and Coughran. [89] I saw Investigator Coughran withdraw a sample of this brown liquid from one of these aging barrels.

Q. Was the defendant present at this time?

A. No, sir.

Q. Where had the defendant gone? Did you know?

A. He went with Mr. Awrey to unlock this other shed. After Coughran had withdrawn this one gallon jug sample from the barrel, he took another gallon jug from one of the cases. And I marked them with the date, my initials, where each one came from, and Coughran and Jones. And then Investigator Jones placed the samples in the trunk of his car.

(Testimony of M. F. Warner.)

Q. Are those samples in court today?

A. Yes, sir.

Q. Would you like to point them out, please, and describe what they are?

A. Government's Exhibit No. 2 is the bottle that was taken from one of the cases, because I took my ring and scratched on there "cases."

Q. Which ring do you speak of?

A. It is the ring I have on.

Government's Exhibit No. 1 contains the liquid that was withdrawn from the 50-gallon aging barrel.

Q. And did you mark that one in the same manner? A. Yes, sir.

Q. What was later done with the two exhibits for [90] identification?

A. Investigator Coughran, or Investigator Jones placed them in this empty cardboard case and placed them in the trunk of his car.

Q. Did you see them again subsequent to that time before you saw them in court?

A. Yes, sir.

Q. When? A. The following morning.

Q. What did you do, if anything, with either or both of these exhibits for identification?

A. I withdrew a sample, an 8-ounce sample from each jug for transmittal to the United States Chemist in San Francisco for analysis.

Q. And were each of these samples in fact transmitted to the United States Chemist in San Francisco? A. Yes, sir.

Q. By whom?

(Testimony of M. F. Warner.)

A. By Investigator Awrey.

Q. Do you know when they were transmitted to San Francisco? A. On September 16, 1955.

Q. Were you present at the time that they were forwarded?

A. I was present when they were packed. I didn't [91] actually see Mr. Awrey mail them.

Q. Where have Government's Exhibits Nos. 1 and 2 been since the samples were removed from each of them?

A. They have been in the safe at Room 850, 417 South Hill Street, Los Angeles.

Q. Until they were brought into court today?

A. Yes, sir.

Q. Now, go back, if you will, Mr. Warner, and pick up your testimony concerning what you saw and did after you participated in the obtaining of these samples at the Ramsey residence.

A. Shortly thereafter I went out of the building and saw Investigator Awrey and the defendant in a conversation down by this other building, and I went down there and Mr. Awrey had this copper pot that he had found and a steel drum that contained a coil. I didn't hear any of the conversation at that time.

Then I went back to the shed where we found these distilled spirits and Mr. Ramsey came up to me and asked me if he could go in the house and change his clothes, and I told him that he could.

Q. Did he then leave? A. Yes.

Q. The next time you saw him was he dressed

(Testimony of M. F. Warner.)

in different attire than he was dressed in when he asked to go in [92] and change? A. Yes, sir.

Q. What was he dressed in when you first saw him? A. As I recall, a shirt and slacks.

Q. What was he dressed in after he returned from the house? A. Suit and tie, sport shirt.

Q. Approximately how long was he in the house?

A. I don't recall because I left the premises at that time to get some film and flash bulbs to photograph the entire operation.

Q. Did you then return and photograph the entire operation? A. Yes, sir.

Mr. Lavine: Your Honor, may we approach the bench on a matter?

The Court: Yes.

(Whereupon the proceedings were had out of the presence of the jury and the defendant.)

Mr. Lavine: The Government has submitted to me a number of photographs that were taken and about which he is going to ask this witness questions, and each of the photographs has a lot of writing on the back that is improper; and aside from my basic objection that these were taken not in accordance with any search warrant but were taken in violation of [93] the Fourth and Fifth Amendments, the things that are on the back, if they are passed over, and I know jurors have a habit——

The Court: Have you copies of them?

(Testimony of M. F. Warner.)

Mr. Bender: No, sir. If I had known of this I could have had copies.

The Court: Well, you can get copies over the night recess, can't you?

Mr. Bender: I don't know if we can.

The Court: Or you can have these photographed.

Mr. Bender: The film went to Washington.

The Court: You can have these photographs photographed.

Mr. Bender: All right, your Honor. I think that is a good suggestion.

The Court: The writing on the back is inadmissible and——

Mr. Bender: Well, the writing on the back, it is Government's position, is descriptive. But we could have the clerk paste some heavy paper over the writing.

The Court: But the jury up there would be looking at it.

Mr. Bender: It isn't our purpose that they would read anything on the back.

The Court: Well, you had better have copies made of these over the night recess.

Mr. Bender: Should we conclude the Government's questioning of this witness? [94]

The Court: Except for these photographs. It is pretty near the time for taking a recess.

Mr. Bender: What time do you take your recess?

The Court: About 4:00 o'clock.

(Testimony of M. F. Warner.)

(Whereupon the following proceedings were had in the presence of the jury and the defendant.)

Q. (By Mr. Bender): Mr. Warner, upon your return to the Ramsey residence what did you do?

A. I photographed everything that we seized and was eventually destroyed.

Q. And what were the other investigators doing at the time that you were making these photographs?

A. Well, I think Investigators Coughran and Jones were completing their inventory. And I think Investigator Travis was in the house. I don't recall where Mr. Awrey was.

Q. Was Mr. Linder there? A. No, sir.

Q. When did Mr. Linder arrive?

A. He arrived at about 2:00 o'clock.

Q. When Mr. Linder arrived did you have any conversation with him concerning the samples which were obtained earlier by Jones, yourself and Coughran? A. No, sir.

Q. When the samples were obtained earlier was the defendant present? [95]

A. Not that I recall.

Q. What occurred then after your return and while you were taking these photographs? Did anything further occur?

A. Well, after I had completed the taking of the pictures of everything, we began to destroy all the

(Testimony of M. F. Warner.)

distilled spirits, barrels, the sugar, the malt, everything that we could connect with the operation.

Q. Where did you go then?

A. Then I took photographs of all the destroyed property.

Q. And after you took the photographs where did you go? What did you do?

A. After everything had been destroyed, why, I prepared an inventory from notes and from other information that the other investigators gave me.

Q. "By everything destroyed," do you mean Government's Exhibits No. 1 and No. 2 for identification?

A. Yes, sir.

Q. You mean they were destroyed?

A. No, sir; everything but those.

Q. At about what time did you leave the Ramsey premises on that date?

A. I would say at 3:30.

Q. Did you return later that day?

A. Yes. [96]

Q. About what time did you return?

A. Sometime after 6:00 o'clock.

Q. Was anyone with you when you returned?

A. Yes, sir, Investigator Coughran.

Q. What was the purpose of your returning to the premises?

A. We returned to Los Angeles from the premises at 1011-1011½ West 223rd Street and there was some conversation about missing bottles, missing samples. We returned to these premises to look for these two bottles.

(Testimony of M. F. Warner.)

Q. Which two bottles?

A. The two bottles that were supposed to be missing.

Q. Was anyone at the Ramsey premises at the time that you returned? A. Yes, sir.

Q. In the evening? A. Yes, sir.

Q. Who was there?

A. The defendant, his wife, one man that I can identify as William Warren, and I think two other unidentified people.

Q. Did you have any conversation with the defendant at that time? A. I did.

Q. What did you say and what did he say?

A. I asked him if the shed where these spirits were [97] found originally was locked, and I asked Mr. Ramsey if he would unlock the shed, and he did. We went in and looked around and failed to find any two jugs of liquid. We came out and I thanked him, and then we left.

Q. You didn't find the samples that Investigator Linder had taken? A. I didn't find anything.

Mr. Bender: Your Honor, at this time the Government would conclude its direct examination of this witness but for the photographs which we have discussed at the bench.

The Court: Well, it is 4:00 o'clock, and we have had a long afternoon. I think we will take our recess for the day.

Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you not to discuss this case with anyone and

not to allow anyone to discuss it with you; not to formulate or express any opinion as to the rights of the parties until this case has finally been submitted to you. That means when you get home tonight that you are not to discuss this case with your immediate family. You are not to discuss the case with anyone. Wait until the case is over with and then you can talk about it all you want to. But until this case has been finally submitted to you for your decision you are not to express any opinion and you are not to talk the matter over with anybody. [98]

With that admonition we will now recess until 10:00 o'clock tomorrow morning.

(Whereupon a recess was taken until 10:00 o'clock a.m. of the following day, Wednesday, December 21, 1955.) [99]

Wednesday, December 21, 1955—10:00 A.M.

The Clerk: Case No. 24515, United States of America vs. Milton Grady Ramsey.

Mr. Bender: Ready, your Honor.

Mr. Lavine: Ready, your Honor.

The Court: Is it stipulated that the jury is present and in the box?

Mr. Bender: So stipulated, your Honor. And the defendant is present in court.

Mr. Lavine: So stipulated.

The Court: You may proceed.

Mr. Bender: Your Honor, Mr. Warner was on

the stand yesterday afternoon at the close of the proceedings. May he resume the stand at this time?

The Court: Mr. Warner, come forward.

Mr. Lavine: Your Honor, may the record show that I am handing proposed instructions and copies to the Court—the originals to the Court.

And I am going to examine some pictures, if I may.

The Court: Do you want the reporter to get what you are saying?

Mr. Lavine: Yes, your Honor.

The Court: Well, you will have to speak up.

Mr. Lavine: I will speak out louder, your Honor. [102]

Mr. Bender: I don't know how your Honor would prefer to handle this. We have approximately 15 photographs which the Government intends to introduce in evidence.

The Court: It doesn't make any difference to me. Ask the clerk.

The Clerk: It doesn't make any difference. Do you want to offer them all or each one separately?

Mr. Bender: I believe separate exhibits would be better. Then we can refer to them by exhibit number.

The Court: It may be marked for identification only.

The Clerk: Government's Exhibit 3 for identification.

(The exhibit referred to was marked Plaintiff's Exhibit 3 for identification.)

Mr. Bender: Would you hand it to the witness?

Mr. Lavine: May we approach the bench, your Honor?

The Court: Yes.

(Whereupon, the following proceedings were had outside the hearing of the jury and the defendant:)

Mr. Lavine: May it please the Court, with respect to these photographs now we object to the use in evidence of any of these photographs at this time for the reason that the testimony, as it now appears, is that there was nothing found in the house and that the search warrant which was testified to was a search warrant for the two houses, the two given house addresses. There is nothing in the search warrant which [103] would give authority for the search of a garage which was locked and separate from the house and from which these photographs now purport to show pictures of things from that garage, which were not expressed in any search warrant. Therefore, any photographs of the same would be in violation of the Fourth and Fifth Amendments of the Constitution and Rule 41 of the Federal Rules for the District Court of the United States and all its provisions.

Now, last night I spent some time——

The Court: Just make your motion.

Mr. Lavine: That is my objection to the introduction of any evidence, your Honor.

The Court: Overruled.

Mr. Lavine: And may I add, so the record is

clear, that of course photographs would be secondary evidence of original articles, and under the authorities, *Silverthorne Lumber Co. vs. United States*, I object to secondary evidence.

The Court: Overruled.

Mr. Lavine: I want to clear up one thing I said yesterday on the record, your Honor. I believe your Honor and I think counsel assumed that I took the position that the search warrant was valid for the officers to go on the premises on the basis of the search. I believe it was valid for them to go into the house or houses in the search but not in the garage, which was separate and apart from the houses. I [104] wanted to make my position clear on that point. And I have objected on that ground.

The Court: The objection is overruled.

Mr. Lavine: May it be understood that I have a running objection to all of this testimony on the photographs?

The Court: You may have a running objection to that line.

Mr. Lavine: On the grounds specified.

The Court: Yes.

(Whereupon, the following proceedings were had in the presence and hearing of the jury and the defendant:)

M. F. WARNER

a witness called on behalf of the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination

(Continued)

Mr. Bender: I see that the clerk has handed Government's Exhibit No. 3 for identification to the witness.

By Mr. Bender:

Q. Mr. Warner, have you examined Government's Exhibit No. 3 for identification?

A. Yes, sir.

Q. Is this one of the photographs which you testified yesterday that you took of the Ramsey premises on September 15, 1955?

A. Yes, sir. [105]

Q. What is it a picture of?

A. It is a picture of the west side of the large house at 1011 East 223rd Street.

Mr. Bender: The Government offers this in evidence as Exhibit No. 3.

Mr. Lavine: I object to it on the grounds heretofore stated; violation of the Fourth and Fifth Amendments to the Constitution of the United States and Section 41 of the Rules of the Federal District Court of the United States.

The Court: Overruled.

The Clerk: Exhibit No. 3 in evidence.

(The exhibit referred to, marked Plaintiff's Exhibit 3, was received in evidence.)

(Testimony of M. F. Warner.)

Mr. Bender: Have you examined all the photographs?

Mr. Lavine: I have examined all of them. In the interest of time I will make the same objection to each of them.

The Court: Same objection; same ruling.

Mr. Bender: Will you mark each one in order then?

The Clerk: Government's Exhibits 4 to 17, inclusive, for identification.

(The exhibits referred to were marked Plaintiff's Exhibits 4 to 17 for identification.)

Mr. Bender: Would you please place the proposed exhibits before the witness?

(Whereupon, the documents were placed before the witness.) [106]

Q. (By Mr. Bender): Mr. Warner, would you examine Government's proposed Exhibits Nos. 4 through 17 which have been placed before you and which have been marked for identification only.

Have you examined the proposed Government's exhibits which have been placed before you?

A. Yes, sir.

Q. Do each of those proposed exhibits portray or are they reproductions of the photographs which you took of the premises of the Ramsey residence on September 15, 1955?

A. Yes, sir.

Mr. Bender: The Government offers Government's Exhibits for identification Nos. 4 through 17 into evidence.

(Testimony of M. F. Warner.)

The Court: They may be received in evidence.

Mr. Lavine: May it be understood that I have my objection.

The Court: Same objection; same ruling.

(The exhibits referred to, marked Plaintiff's Exhibits 4 through 17, were received in evidence.)

Mr. Bender: You may cross-examine.

Cross-Examination

By Mr. Lavine:

Q. Mr. Warner, you made out an inventory of the various articles that you photographed, did you not? A. Yes, sir. [107]

Q. And what time did you make out this inventory? A. At about 3:15.

Q. That was after all the investigation had been made and everything was destroyed?

A. Yes, sir.

Q. Was Mr. Linder on the premises at that time? A. Yes, sir.

Q. How long had he been there?

A. Approximately an hour and 15 minutes.

Q. When this inventory was made out somebody called out these items, did they not?

A. No. To qualify that, the distilled spirits, the sugar, the malt, the hose and the hydrometer, the thermometer, they had all been listed on separate pieces of paper by Investigator Coughran and Investigator Jones.

Q. Those you copied, did you?

(Testimony of M. F. Warner.)

A. Yes, sir, on that inventory.

Q. The rest of the things there were called out, is that correct?

A. The things that were called out was that I wanted—they had down one pump, one motor, and I wanted the serial number of the pump, the make of the motor, the serial number, if it had it, and the horsepower. I think Investigator Jones called that. I also had them call the motor numbers off of the 1955 Ford and the 1953 Plymouth. [108]

Q. Now, how about the gallons of liquid?

A. It was handed to me as 40 gallons.

Q. By whom?

A. This inventory—I think Investigator Coughran had the distilled spirit inventory.

Q. It was handed to you as 40 gallons and you put down 40 gallons, isn't that right?

A. Yes, sir.

Q. And when did you strike out "40" and put in the figures "38"?

A. At that time, because I forgot the two samples.

Q. I see. And had you initialed the two samples?

A. Did I initial the two samples?

Q. Yes. A. Yes, sir.

Q. Did you initial the two caps?

A. No, sir.

Q. Did Officer Linder initial the caps?

A. I didn't see Officer Linder take any samples.

Q. I see. When you changed the "40" to "38" on the inventory did you call it out to somebody?

(Testimony of M. F. Warner.)

A. No.

Q. Did you take the two gallons that were supposedly retained?

A. Did I take the original two samples? [109]

Q. Yes.

A. No. Investigator Coughran took the samples.

Q. You didn't. Did you see him take them?

A. Yes, sir.

Q. Where were those two samples located?

A. At the time he took them?

Q. Yes.

A. He took one gallon sample from a 50-gallon barrel and another gallon from a case.

Q. Were they different colors?

A. No, they were practically the same.

Q. Well, did you notice whether one was lighter and the other darker?

A. Not particularly, no.

Q. Where was the case that you are referring to? A. It was in the shed with the barrel.

Q. And where was the other 50-gallon jug?

A. 50-gallon jug?

Q. Or 5-gallon jug?

A. They were in the same room.

Q. In the same room? A. Yes, sir.

Q. Well, now, how many of your officers were there at the time?

A. At the time these samples were taken Investigator [110] Jones, Coughran and myself.

Q. Where was Linder?

A. Linder wasn't there.

(Testimony of M. F. Warner.)

Q. Was there another officer on this case?

A. There were two more.

Q. Where were they?

A. Investigator Awrey was at the back of the premises with the defendant and Investigator Travis was in the house.

Q. I see. Now, this inventory that I show you, is that in your handwriting? A. Yes, sir.

Q. And the signature below. I can't read the first part of it. Is that in your handwriting?

A. Yes.

Q. What is the first word there?

A. "M. F."

Q. M. F.? A. Yes, sir.

Q. Now, the change that you made, you put down "40 gallons" in the inventory as being destroyed on the premises, is that correct, first?

A. Yes, sir.

Q. And then you struck out "40" and put down "38" is that correct? A. Yes, sir. [111]

Q. Now, about how long after you put down the 40 did you change that to 38?

A. Well, I would say right after I put it down.

Q. You mean right there on the premises?

A. Oh, yes, sir.

Q. You didn't change that in the office after you got back to the office? A. No, sir.

Q. Did you pour out or assist in the pouring out of the 38 gallons?

A. As I recall I broke up a few jugs, yes, sir.

Q. Well, when you left did you observe that all

(Testimony of M. F. Warner.)

the jugs that you saw and had photographed were broken up? A. All but two.

Q. I see. Now, what time did you leave?

A. Approximately 3:30.

Q. Did the other officers leave at the same time?

A. I believe Mr. Awrey and I were the last ones to leave. I think Jones and Travis left first and then Coughran and then Linder and then Mr. Awrey and I. He and I were the last ones to leave.

Q. Who was last besides you?

A. Mr. Awrey.

Q. But you two left at the same time?

A. Yes, sir. [112]

Q. Now, none of these articles that you destroyed were found in the two houses, were they?

A. No, sir.

Q. And all of the articles that you found or destroyed were in this garage, is that correct?

A. They were in the three sheds.

Q. Or the three sheds. And those sheds were locked, were they not? A. Yes, sir.

Q. And did you tell the defendant, or did you hear someone tell the defendant that unless the sheds were unlocked that you would have to break in? A. No, sir.

Q. Now, you didn't see any of these articles in operation, did you? A. No, sir.

Q. Did you taste any of the liquid?

A. No, sir.

Q. The breaking up process consisted of smashing these bottles, did it not— A. Yes, sir.

(Testimony of M. F. Warner.)

Q. ———and emptying the contents?

A. Yes, sir.

Q. And the smashing up of the barrels, is that correct?

A. The barrels, the copper pot, the hoses, the motor, [113] the pump—all of it.

Q. Did you have a hatchet with you?

A. No, sir, I didn't.

Q. What did you use to smash up the barrels?

A. Well, as I recall, there was a sledge hammer and an ax and a pick ax.

Q. Did you have those with you?

A. No, sir.

Q. Now, you never at any time had a search warrant to go into the garage, did you?

A. The search warrant was for 1011, 1011½ West 223rd Street, Torrance.

Q. You never at any time had any specific search warrant for the garage, did you, describing the garage or its contents?

A. Not describing the garage, no, sir.

Q. And when you went out to the garage the garage doors were locked, isn't that correct?

A. Yes, sir.

Q. And each of these three buildings was locked? A. Yes, sir.

Q. And you had no search warrant for any one of these three buildings specifically describing them, is that correct? A. That's right.

Q. Do you have the other copy of the other inventory [114] that you copied this inventory from?

(Testimony of M. F. Warner.)

A. Yes, sir.

Q. Could I see it?

A. Yes, sir. Do you want to take it out?

Q. Yes. What I am referring to here is the original of the copy that you gave to the defendant.

A. Yes, sir.

Q. What I am referring to is not the original, but you testified here a little while ago that you made some copies, that you copied certain of this data from another document. Now, that is what I am asking you.

A. No, sir. All they had was some gallons of whiskey, so much this and so much of that on three or four sheets of paper, and I wanted to make an itemized inventory showing where it was taken from, what was taken, and Mr. Ramsey would sign it and I would sign it and he would get a copy of it.

Q. But you don't have the other data from which you said you made this copy, is that correct?

A. No, sir.

Q. Do any of the other officers, to your knowledge, have that data?

A. Not to my knowledge.

Q. Have you ever seen it since the time that you made the copies?

A. No, sir. [115]

Mr. Lavine: That is all, your Honor.

(Testimony of M. F. Warner.)

Redirect Examination

By Mr. Bender:

Q. Mr. Warner, was this search warrant for the entire premises?

Mr. Lavine: I object to that as calling for a legal conclusion of the witness, your Honor.

Mr. Bender: Your Honor, counsel has asked if it was for the garage. That is the same thing. It calls for a conclusion.

The Court: I have just been wondering—let me see the search warrant.

(Whereupon, the document was handed to the Court.)

Well, the search warrant says “* * * premises known as 1011 & 1011½ 223rd St., Torrance, California.”

It doesn't say “a building,” It says “the premises.”

Now, I live at 2700 Monterey Road. It is on a lot. Where do I live? Do I live on the entire lot or just in the house?

Mr. Lavine: Well, your Honor, the cases distinguish——

The Court: Where are your authorities?

Mr. Lavine: I have been researching them last night, and I want to give your Honor some of them.

The Court: The objection is overruled. You

(Testimony of M. F. Warner.)

may answer. I think when it says "premises" it means all the premises and [116] not just the house.

Mr. Bender: Do you recall the question?

The Witness: No.

Mr. Bender: Would you read the question, please?

(Question read.)

The Witness: Yes, sir.

Mr. Bender: No further questions.

Mr. Lavine: I have no questions.

Just a minute. I do have a question.

Recross-Examination

By Mr. Lavine:

Q. Do you know the difference between a house and a garage? A. Yes, sir.

Q. And when you first made this search you went into the house, did you not?

A. Yes, sir.

Q. And that was what your search was directed to, wasn't it?

A. No, sir. The search was directed to the premises.

Q. Well, you went into each of the houses first, did you not? A. I went into one house.

Q. And one of your fellow officers went into the other house? [117]

A. Yes, sir, I believe he did.

Q. You found no liquor in either of the houses, did you, or any spirits?

(Testimony of M. F. Warner.)

A. I found nothing in the large house.

Mr. Lavine: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Bender: The Government would like to request the Court to dismiss witness Bumpass who testified yesterday.

The Court: Any objection?

Mr. Lavine: No objection.

The Court: He may be excused.

Mr. Bender: Mr. Awrey is ill today and may not return.

Mr. Lavine: I have no objection.

Mr. Bender: Thank you.

The Government will call as its next witness George Crane.

GEORGE D. CRANE

called as a witness on behalf of the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: George D. Crane, C-r-a-n-e.

Direct Examination

By Mr. Bender:

Q. Mr. Crane, what is your profession or occupation? [118]

A. I am a chemist and a chemical engineer.

(Testimony of George D. Crane.)

Q. For how long have you been a chemist?

A. Since 1923.

Q. Are you employed by the Government at the present time? A. Yes, sir.

Q. For how long have you been so employed by the Government? A. Since 1932.

Q. As a chemist?

A. Chemist and field officer.

Q. Have you had any experience with the control of brandy distilleries? A. Yes, sir.

Q. What experience have you had?

A. For several years I was the officer in charge in control of the production, construction and efficiency of all of the brandy and distilled spirits stills in the Southern California area.

Q. Have you had occasion to make prior analysis of the alcoholic content of liquids?

A. Yes, sir.

Q. Can you estimate approximately how many analyses you have made in your experience as a chemist?

A. Well, it would be thousands, I presume. I have [119] no recollection exactly.

Q. More than hundreds, anyway?

A. Definitely, yes, sir.

Q. Directing your attention to September of 1955, in that month, did you receive any samples from the Alcohol & Tobacco Tax Department of Los Angeles, California? A. Yes, sir.

Q. Do you have those with you?

A. Yes, sir.

(Testimony of George D. Crane.)

Mr. Bender: May I see them?

(Whereupon, the articles were given to counsel.)

Mr. Lavine: Counsel, at the appropriate time I would like to take him on voir dire.

Mr. Bender: This is an appropriate time.

The Court: On his qualifications?

Mr. Lavine: Yes, your Honor.

The Court: All right.

Mr. Lavine: Are you a licensed chemist?

The Witness: No, sir. I know of no such term, sir.

Mr. Lavine: Well, do you hold any degrees in chemistry?

The Witness: Yes, sir.

Mr. Lavine: Where from?

The Witness: From the Army Institution of Technology, Chicago, Illinois.

Mr. Lavine: You said that you had made investigations [120] of spirits. What kind of spirits have you made investigations of?

The Witness: Well, I presume most all kinds of alcoholic spirits in existence, sir; used in this country anyway.

Mr. Lavine: Well, have you made them of any produced in any foreign countries?

The Witness: Yes, sir.

Mr. Lavine: And what do you call the spirits?

The Witness: What do you call spirits?

Mr. Lavine: Yes.

The Witness: Well, spirits is a mixture of ethyl

(Testimony of George D. Crane.)

alcohol, water, and such congenics as may have been produced during the fermentation and distillation of the alcohol.

Mr. Lavine: Well, is 3.2 per cent a spirit?

The Witness: It is not considered a spirit, as far as the law is concerned, I believe, unless it is produced at a premises which has a still in connection therewith.

Mr. Lavine: But it is a spirit, is that correct?

The Witness: Yes, sir. It has alcohol in it.

Mr. Lavine: In other words, any substance that has alcohol in it is a spirit?

The Witness: Anything, I think, in the alcohol laws above one-half of one per cent is considered spirits.

Mr. Lavine: And perfume, is that a spirit?

The Witness: Perfume is normally made with a denatured [121] alcohol.

Mr. Lavine: Well, is it a spirit?

The Witness: Yes, sir.

Mr. Lavine: And are medicines that contain any alcohol, are those spirits?

The Witness: Well, the terms confuse me a bit. I am not sure just what answer I would give to that. I can qualify it in this way: if it has a certain quantity of harmful or such ingredients as will make it, let's say, unpotable, it is not classed as spirits although it does have alcohol in it.

Mr. Lavine: Well, I take it that you didn't do any examining of any liquids for spirit content in the prohibition days, did you?

(Testimony of George D. Crane.)

The Witness: I had very little experience during those days. I think prohibition was in existence when I went to work for the Government.

Mr. Lavine: That was 1932?

The Witness: Yes, sir.

Mr. Lavine: Where have you made your investigation of liquids to determine if they had spirits in them?

The Witness: I made them at the Government offices at all of these distilled spirits plants of which I had control; and also in the Government laboratories in San Francisco.

Mr. Lavine: And did that experience enable you to tell [122] how old the liquid was?

The Witness: No. I don't believe I could state that.

Mr. Lavine: Did it enable you to tell where the liquid came from?

The Witness: To a degree I think I can tell, yes, sir.

Mr. Lavine: Well, could you tell from that experience whether it was made in the United States or made abroad?

The Witness: No.

Mr. Lavine: Could your experience tell you how long it had been made, what the age of it was?

The Witness: I said no to that.

Mr. Lavine: Could you tell from what substance it was made?

The Witness: By organoleptic and chemical examination you can tell usually what type of dis-

(Testimony of George D. Crane.)

tilling apparatus was used in producing it. However, you cannot define any particular raw substance from which it was made unless you have the still information at hand.

Mr. Lavine: As I understand your testimony, you had charge of a number of licensed stills.

The Witness: Yes, sir.

Mr. Lavine: What number, if any, of unlicensed stills have you ever examined?

The Witness: None, except, let's say, as museum pieces.

Mr. Lavine: I think that is all, your Honor. Thank you. [123]

Mr. Bender: Your Honor, may I approach the witness in order to obtain two bottles that he brought with him?

The Court: Yes.

Mr. Bender: If the Court please, the Government requests that the clerk mark as Government's Exhibits Nos. 18 and 19 for identification these two bottles.

The Court: They may be marked for identification as Exhibits 18 and 19 for identification only.

(The exhibits referred to were marked Plaintiff's Exhibits 18 and 19 for identification.)

Mr. Bender: And would you please place each of the two proposed exhibits before the witness?

(Whereupon, the two exhibits were placed before the witness.)

(Testimony of George D. Crane.)

Q. (By Mr. Bender): Would you examine Government's proposed Exhibits Nos. 18 and 19, and tell us where you first saw each of those exhibits, if you have seen them before?

A. They were delivered by mail to the Treasury Department laboratories in San Francisco on the 19th of September, this year.

Q. Did you receive them then at that time?

A. Yes, sir.

Q. What if anything did you do with each of them? A. They were given——

Mr. Lavine: May all of this testimony be subject to [124] my basic objection?

The Court: You may have a running objection to this testimony.

Mr. Lavine: Thank you. That is, in violation of the Fourth and Fifth Amendments of the Constitution of the United States.

The Witness: The labels that were attached to the bottles were given laboratory numbers. The bottles were placed in the locked room where we keep samples. And the next day I removed the samples from this locked room, analyzed them, sealed them and returned them to this locked room, where they have been until I was requested to bring them to this court.

Q. (By Mr. Bender): Would you examine Government's Exhibit No. 8 for identification and tell us what that was from?

A. It is marked "from aging barrel" on the

(Testimony of George D. Crane.)

label. An analysis was made. Proof of the material is 88.1 degrees in alcohol and 33.6 grams of acetic acid per hundred meters. And there is no carmel. The color is $5\frac{1}{4}$ brown on the Lovabond scale.

Q. Did you also make a similar test concerning Government's Exhibit No. 19 for identification?

A. Yes, sir. The same test.

Q. Did you make an organoleptic test? [125]

A. On both of these.

Q. Based on these tests that you made of each of the proposed Government's exhibits that are before you, do you have an opinion concerning whether or not they are distilled spirits?

A. They are distilled spirits.

Q. Mr. Crane, is there a difference between dextrose and corn sugar?

A. Corn sugar is practically all dextrose.

Q. And in their usage as an ingredient in the manufacture of a distilled spirit is there any significant difference between the two of them?

A. No.

Mr. Lavine: I object. There has been no foundation laid as to this line of questioning.

Mr. Bender: This witness testified that he has had experience for years in the control of brandy distilleries throughout Southern California. Surely he will know what ingredients are used in the manufacture of distilled spirits, and that is what I am asking him.

The Court: Overruled.

Mr. Bender: You may answer the question.

(Testimony of George D. Crane.)

The Witness: I am afraid I have missed it now, sir.

The Court: Read the question.

(Question read.) [126]

The Witness: No.

Q. (By Mr. Bender): Are malt syrup and yeast ingredients for making distilled spirits?

A. Yes, sir.

Q. You testified that in your opinion each of the samples before you is distilled spirits. Do you have an opinion as to whether they are fit for human consumption? A. They are.

Q. And upon voir dire examination by opposing counsel, you went into the question of, for example, perfumes being spirits. What is the distinguishing feature then insofar as perfumes and the exhibits before you are concerned?

A. Articles such as perfumes and medicines are not presumed to be potable; fit for human consumption, in other words.

Q. Is ordinary house sugar—in other words, cane or beet sugar—an ingredient for the making of distilled spirits? A. No, sir.

Mr. Bender: Your Honor, at this time the Government moves that the Court admit into evidence the Government's Exhibits Nos. 18 and 19 for identification.

Mr. Lavine: To which we object, your Honor, at this time for several reasons.

The Court: I am going to have to sustain the

(Testimony of George D. Crane.)

objection [127] at this time because I think you should establish the fact that these particular samples were sent to the chemist. You had better call your witness back to the stand who sent your samples and have them identified.

Mr. Bender: We have no further questions.

Cross-Examination

By Mr. Lavine:

Q. What is the formula for distilled spirits as contained in these Exhibits 18 and 19?

A. About 44 per cent alcohol CTH 50H, and the balance is water and an undetermined amount of feral—probably propyl alcohol and fusel oil; also, acetic acid.

Q. Do either of these bottles contain any croton oil? A. No, sir.

Q. Do you know of any alcoholic spirits of a similar kind that contain croton oil?

A. No, sir. I haven't run into croton oil since the Army days.

Q. Well, what is croton oil?

A. I don't know what the formula is, sir. I know the effect of it.

Q. Well, you haven't ever found it distilled out of any distillate, have you? A. No, sir.

Q. Now, in connection with these samples, did you [128] examine them separately?

A. Yes, sir.

Q. Did you find them different from each other?

(Testimony of George D. Crane.)

A. To a certain degree, yes, sir.

Q. What did you find different about them?

A. There was five-tenths of a degree proof difference between sample 18 and sample 19. There was also a difference in the amount of total acids, which is mostly acetic acid. There is more in 19 than in 18. However, the difference is minor, I would say.

Q. Was there a difference in the color?

A. No, sir. The colors were identical in both cases.

Q. Well, now, when you took the sample how much of the sample of 18 did you take to make your test?

A. I think I didn't use any more than—well, of course, I used the whole bottle in obtaining the proof, but it was put back in the bottle and then subsequent amounts were taken to determine the proper color reading, and also for the determination of the acids.

Q. All right. Now, you have told us you poured out the whole bottle after you got it, is that right?

A. Put it into a hydrometer cylinder, yes, sir.

Q. And how long did you keep it in the hydrometer cylinder?

A. Oh, I doubt if it was in the cylinder more than [129] two minutes.

Q. Now, did you put any burner under it in any way? A. No, sir.

Q. Did you taste any of it? A. Yes, sir.

Q. And how much of it did you taste?

(Testimony of George D. Crane.)

A. Just enough to put on my tongue. I put it on my tongue and spat it out.

Q. Did you do it on a spoon* or just from the bottle?

A. I poured a little into the beaker from the hydrometer, graduated it.

Q. I see. And in your experience in connection with distilleries did you ever have the occupation of being a whiskey taster or a taster of brandy?

A. No, sir. But I have done quite a bit of it.

Q. Well, I am not asking you about your personal habits now. I am talking about your profession.

A. I consume very little spirits personally.

Q. Professionally you would say you have tasted a lot of it?

A. In tasting of distilled spirits and things of this kind, if you want to keep your ethics pure you don't swallow it. You spit it out after you have tasted it.

Q. And did you spit it out after you got through testing this? [130]

A. I sure did, yes, sir.

Q. Did you find this pretty good whiskey as whiskey goes?

A. I wouldn't hand it such a high mark, no, sir.

Q. I see. Well, could you tell how old it was from the taste?

A. I think from the fact that——

Q. From the taste, now, just from the taste. Confine yourself to that, please.

(Testimony of George D. Crane.)

A. I have an opinion but I wouldn't state for a positive fact.

Q. Well, have you tasted 4-year-old whiskey?

A. Yes, sir.

Q. And 8-year-old whiskey? A. Yes, sir.

Q. What is the difference between the taste of those whiskeys?

A. The taste is a rather indefinable substance known as the ester content. That's the way I would describe it. The older the whiskey, up to a point, has a more of a bouquet due to the ethyl acetates and the higher alcohols which have combined with the char to produce the bouquet or ester content of the whiskey.

Q. Well, after eight years it doesn't add anything to it, isn't that a fact? [131]

A. I don't believe it does, no, sir.

Q. Now, could you tell whether either of those was locally or foreign-made? A. No, sir.

Q. Could you tell whether it had been brought in on a boat or whether it had been on land all the time? A. No, sir.

Q. Now, what did you do first? Did you taste it first before you poured any of it into any other container for any test?

A. No. I always obtain the proof first.

Q. And that is done with what kind of an instrument?

A. It's a long, thin cylinder possibly an inch and a quarter in diameter and approximately this high (indicating) with a base on it so it won't fall. The material is poured in it and the crude hydrometer is lowered into it. The apparent proof is read

(Testimony of George D. Crane.)

from the stem of the hydrometer. The hydrometer is withdrawn and the thermometer is then placed in the liquid. When you have both the apparent proof and the temperature, then by reference to the manual you get the true proof; in other words, the proof as reduced to 60 degrees Fahrenheit.

Q. Well, in other words, you made the proof test by referring to some manual after you had put this liquid into a hydrometer, is that correct? [132]

A. No; after I put the hydrometer into the liquid.

Q. I am reversed. After you put the hydrometer into the liquid. It wasn't your own determination but the determination of a book, is that right, that you examined? A. Yes, sir.

Q. And it was based on figures in that book that you made this calculation, is that correct?

A. Yes, sir.

Q. Did you make some other test, then examine the book to determine other features of this content?

A. No. The rest of them were made by pure chemical analysis and physical analysis.

Q. Except the tasting. That wasn't done by pure chemical analysis, was it? A. No, sir.

Q. Did you taste each of the bottles separately?

A. Yes, sir.

Q. How soon apart did you taste the two separately?

A. I believe I analyzed one sample and then completed the analysis on that, which took approxi-

(Testimony of George D. Crane.)

mately three-quarters of an hour, and then that sample was closed and the other sample was taken and the analysis repeated. So there was probably a range of an hour between the two tastings.

Q. Now, after you tasted the two substances, what then did you do? [133]

A. Well, except for this small amount that had been poured in the beaker for tasting purposes the entire amount had then been returned to the bottle from which it came, and an allocated portion was taken out for the determination of the total acidity of the material. That was the next step.

Q. How did you test for the acidity?

A. That is a method where the—did you want me to go through identical steps?

Q. I want you to tell us how you tested for acidity.

A. 25 millimeters of the distilled spirits are placed in a large porcelain dish which holds about 400 ccs., or I would say 10 or 12 ounces, about the size of a large flat soup bowl; and into this, before the whiskey is added, 250 millimeters of water is added and two millimeters of phenolphthalein, which is an acid basic indicator. Then the distilled water is neutralized by adding a drop or so of sodium hydroxide so you get a faint pink color to the water. Then the 25 millimeters of distilled spirits is added. This is a very accurate measurement made with a pipette, as it is called. This is permitted to run into the flat dish in which the water has been placed, the neutralized water, and of course as soon as the dis-

(Testimony of George D. Crane.)

tilled spirits hits it the pinkish color disappears due to the fact that an acid radical has been added to the liquid. Then when the entire amount has been added to the water by means of a [134] burette, the sodium hydroxide is carefully run, with constant stirring, into this dish until this pinkish color reappears. Then the amount of sodium hydroxide is read on the burette, which is a long tube with markings on it, and this is an indication of the amount of sodium hydroxide it took to neutralize the amount of the acid which was introduced into the water by the whiskey. And then from this the factor is used which gives us the acetic acid or acid content of this amount of whiskey, and since all this is on a hundred cc. basis, multiplied by 4, and you get the acid content of 100 ccs. Multiply that by 1,000 and you get the grams of total acidity per hundred liters.

Q. Now, what is a milliliter?

A. Why, it's the standard volume measurement that is used by chemists throughout the world—one-thousandths of a liter.

Q. Well, we don't have liters around here and the measurements we talk about are a little different. Could you tell us, without any reference to any book or anything, what a milliliter is in terms of a teaspoon?

A. Oh, I think a milliliter would probably be two and a half—or, a teaspoon would be about two and a half milliliters, roughly.

(Testimony of George D. Crane.)

Q. Or, in terms of, say, an ounce? A milliliter would be what portion of an ounce? [135]

A. It's about 29½ milliliters to a fluid ounce.

Q. Now, you didn't pour any of that content back in the bottle, did you? A. No, sir.

Q. Now, you testified that spirits are made out of corn sugar. Spirits can be made out of all kinds of substances, can't it? A. No, sir.

Q. You didn't make any analysis of Exhibits 18 or 19 to determine whether they were made from yeast, did you? A. No, sir.

(Whereupon, counsel consulted with the defendant.)

The Court: Mr. Lavine, while you are consulting with your client I think we will take our morning recess.

Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you not to discuss this case with anyone or allow anyone to discuss it with you; not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition we will now recess until five minutes after 11:00.

(Short recess.)

The Court: Is it stipulated that the jury is present and in the box? [136]

Mr. Lavine: So stipulated, your Honor.

(Testimony of George D. Crane.)

Mr. Bender: So stipulated, your Honor. And the defendant is present in court.

The Court: Any other questions, Mr. Lavine?

Mr. Lavine: No, your Honor.

Redirect Examination

By Mr. Bender:

Q. Mr. Crane, do you have an opinion concerning the slight difference or minor difference between the two samples in their color?

A. The color was the same in both of the samples.

Q. I believe you testified there were minor differences between them.

A. A slight difference in the acetic acid content.

Q. Do you have an opinion concerning the reason for this difference?

A. The sample, Exhibit No. 19, had a little higher acid content, which led to my conclusion that it probably had a little more aging than the sample, Exhibit No. 18.

Q. In other words, it had been made earlier?

A. Well, I don't know about that. The chemical analysis indicates that it has additional aging to it. How it was obtained, of course, I don't know.

Q. Do you notice any difference in the apparent color between the two samples before you in the small bottles and [137] the large jugs which are Government's Exhibits Nos. 1 and 2 for identification, which are on the floor?

(Testimony of George D. Crane.)

A. I am satisfied that if the liquid in the jugs was compared with these in a cylinder of like dimension they would have the same color.

Q. In other words, if you poured——

Mr. Lavine: I object to that as calling for speculation. The witness says that in order to determine that he would have to measure it and there is no foundation made to show he has measured it.

The Court: Overruled.

Q. (By Mr. Bender): In other words, then, if an empty bottle the size of the small bottle on the desk before you were filled with liquid from one of the larger jugs it would be the same color as the small bottle before you? Is that correct?

A. I think so, yes.

Q. It is just in a larger jug and that is why it looks darker? A. Yes.

Q. Do you have any opinion concerning the age of the distilled spirits in the bottles, Government's Exhibits 18 and 19 for identification, which are before you?

A. I have a qualified opinion which I wouldn't like to have my reputation depend on; but I would say—— [138]

Mr. Lavine: Just a minute. You haven't been asked for that.

The Court: Sustained. He is purely speculating.

The Witness: I am sorry.

Mr. Bender: I am asking him if he has an opinion.

The Court: He says yes, but he qualifies it.

(Testimony of George D. Crane.)

Mr. Bender: Would not that go to the weight of the opinion?

The Court: I have sustained the objection.

Mr. Bender: No further questions.

Mr. Lavine: Your Honor, I would like to ask one question that isn't proper rebuttal.

Recross-Examination

By Mr. Lavine:

Q. What is croton oil used for?

A. To make anything unpotable.

Q. And that is, to be undrinkable when you say unpotable?

A. That is what I mean, yes, sir.

Q. And it is used as a drastic purgative?

A. Right.

Q. If someone took two bottles that were empty and poured some like substance into the two bottles, that you see in the large jugs, from which these samples were taken, they would have a similar color, wouldn't they? [139]

A. Yes.

Q. It would be impossible to distinguish those from the bottles that were brought in, isn't that right?

A. I fear you have confused me a little, sir.

Q. Well, let me withdraw that last question.

The matter of color is a matter of opinion, isn't it?

A. No, no. The determination of color is an exact comparison with the standard.

(Testimony of George D. Crane.)

Q. Well, do different people see color differently?

A. Not if it is made with the Lovabond color——

Q. Well, you are talking about an exact measure now, aren't you? A. Yes, sir.

Q. The people are looking at two substances. There is a variation in what the color is, isn't there, in the opinion of the person examining it? The substance? A. That's correct.

Q. What is color?

A. Well, color is the result of the refraction or reflection of light through any substance. And it is determined by the absorbance of the particular wave length of the light which this material has.

Q. And that wave length is microscopic in its difference, isn't it? When there is a different shade of color it is small, isn't it? [140]

A. Spectruminically speaking it is quite a narrow range, yes, sir, for color determination.

Q. And in order to test color scientifically you either have to have a measuring instrument—is that correct? A. That's right.

Q. ——or you have to burn the substance and test it under a spectrograph or a spectroscope, isn't that right?

A. It isn't burned; just an absorbent spectrum is obtained.

Q. That is, the measurement of the amount of light that reflects, isn't that correct?

A. That is correct.

(Testimony of George D. Crane.)

Q. Now, in order actually to tell whether these bottles are the same in color you would actually have to make a scientific examination to be accurate, is that right? A. That is right.

Q. And you didn't make any such examination, did you? A. Not on that bottle, no.

Mr. Lavine: That is all.

Mr. Bender: No further questions of this witness.

The Court: You may step down.

(Witness excused.)

The Court: May this witness be excused?

Mr. Lavine: Yes, your Honor.

The Court: You may be excused. [141]

Mr. Bender: The Government calls Charles O. Jones as its next witness.

CHARLES O. JONES

called as a witness on behalf of the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Will you take the stand, please? State your name.

The Witness: Charles O. Jones.

Direct Examination

By Mr. Bender:

Q. Mr. Jones, what is your profession or occupation?

A. I am an investigator for the Alcohol & Tobacco Tax Division of the Treasury Department.

(Testimony of Charles O. Jones.)

Q. Directing your attention to on or about September 15, 1955, what did you observe on that occasion, if anything, with reference to this case?

A. About midnight we started—we were staked out at 1011, 1011½-223rd Street, Torrance. We staked out until around 6:00 o'clock in the morning, when I joined Investigator Warner.

Mr. Lavine: I object to that as being incompetent, irrelevant and immaterial with regard to staking out. I don't see any relevancy to that.

The Court: Is this just cumulative testimony or something new? [142]

Mr. Bender: There will be new portions of the testimony. However, if I may direct a question to the witness, I think I can eliminate a portion of the cumulative material.

The Court: I don't think it is necessary to accumulate any more testimony. You have been about a day and a half. I don't know how we are going to finish this case in two days.

Mr. Lavine: May we approach the bench, your Honor?

The Court: Yes.

(Whereupon, the following proceedings were had out of the hearing of the jury and the defendant.)

Mr. Bender: Your Honor, it is apparent to counsel for the Government that counsel for the defendant is intending to make an issue of the credibility of the Government's witnesses, specifically those

(Testimony of Charles O. Jones.)

who will testify or have testified concerning the obtaining of Government's Exhibits 1 and 2 for identification, in the hope that counsel will establish that these were not in fact ever obtained. And it is necessary that the Government put on each witness for the Government who participated in the obtaining of these samples in order to corroborate the testimony of the other agents who testified about the obtaining of samples. And I further offer to prove that this witness will testify that he was the one who took Government's Exhibits 1 and 2 for identification and placed them in the trunk of his car and [143] later took them to the Government safe and——

The Court: Well, what did you want to say?

Mr. Lavine: It is cumulative, your Honor. As far as the latter part of this testimony is concerned, I think that——

The Court: Well, you objected to the introduction of these two small bottles of liquid and I sustained the objection because I didn't think they had been tied up as to being sent to the——

Mr. Bender: That will be tied in by Mr. Awrey.

Mr. Lavine: That is another witness, your Honor.

Mr. Bender: This witness, your Honor, will testify——

The Court: Go ahead and proceed.

Mr. Lavine: What I am objecting to is all the investigation parts that have nothing to do with the evidentiary matter. I understood that your

(Testimony of Charles O. Jones.)

Honor was limiting him, which I have no objection to, as to what he put in the car and what he did at the investigation. But to take it back to the night before——

Mr. Bender: I think I can cut it down, sir.

The Court: All right.

(Whereupon, the following proceedings were had in the hearing and presence of the jury and the defendant.)

Q. (By Mr. Bender): Mr. Jones, did you participate in the search of the Ramsey premises located at 1011, 1011½ West 223rd Street, Torrance, California, on September 15, [144] 1955?

A. Yes, sir, I did.

Q. Directing your attention to the time that you had entered the premises, did you participate in a search of the smaller premises located at 1011½ West 223rd Street? A. Yes, sir.

Q. What did you do subsequent to your participation in the search of the smaller residence at 223rd Street? What did you observe?

A. We entered the—I entered the premises, the west driveway of 1011½ with Investigators Travis and Coughran. I got out of the car and approached the small building there. I looked around the yard first and then approached the small building, the dwelling house there at 1011½-223rd Street. I was joined by Investigator Bruce Awrey. And we entered that house and searched the house and never found anything in that small house.

(Testimony of Charles O. Jones.)

Q. What did you do after your search of the house?

A. I went outside, and Investigator Warner was standing by a locked garage door. Well, it looked like a garage door. It was two swinging doors that opened up and locked in the middle with the padlock.

Q. Yes. Continue.

A. Mr. Ramsey came outside with a key and opened that door and we went inside. I saw two 5-gallon water [145] bottles full of a brown-colored liquid which appeared to be whiskey.

Mr. Bender: Would the clerk please hand the witness Government's Exhibit 15, one of the photographs?

Q. (By Mr. Bender): Mr. Jones, would you examine Government's Exhibit 15 and tell us if that portrays—well, tell us what that portrays.

A. That is the garage that I entered first with Investigator Warner.

Q. Yes. And you were in the process of telling us what you found in the garage.

A. I saw two 5-gallon water bottles full of this brown-colored liquid which appeared to be whiskey. And they were full. I saw——

Mr. Lavine: I move to strike the word "whiskey."

The Court: He said "appeared to be." The objection is denied.

The Witness: They had no evidence of tax payment; no strip stamps.

(Testimony of Charles O. Jones.)

Mr. Lavine: I move to strike that as volunteered statement.

Mr. Bender: Your Honor, if it is relevant, in the Federal Courts——

The Court: Denied.

The Witness: I saw two barrels, 50-gallon wooden barrels on a rack, each on its own rack in the back of the [146] building, which would be on the east side of the building.

Mr. Bender: Excuse me, Mr. Jones.

Would the clerk please hand the witness all the other photographs which are in evidence?

Q. (By Mr. Bender): As you testify, Mr. Jones, if it's possible, would you look through the exhibits which are now before you and point out and identify the exhibit which refers to anything which you say?

A. These two barrels were lying on their side facing each other, and they had pipes coming out of them. And the pipes, when I examined them closely, they had a little framework over the pipes and there was a coil running from each pipe to the other pipe. And underneath that was a gas jet burner.

Q. Was that in Government's Exhibit 12?

A. Yes, sir.

Q. What else did you do or see?

A. I saw several cases on the floor which contained one-gallon jugs of the same brown-colored liquid which appeared to be whiskey, and never had any strip stamps denoting tax payment.

(Testimony of Charles O. Jones.)

Q. By that you mean it had no stamps whatsoever affixed to any of the bottles or jugs?

A. Yes, sir. I went into the other room, which was an adjoining shed to the south of that, which had an adjoining [147] door, and I saw five and a half 100-pound bags of sugar.

Q. Is that in Government's Exhibit 13?

A. Yes, sir.

Q. Does that properly portray the sugar to which you refer?

A. Yes, sir. Paper bags; 100-pound bags.

Q. What did you do then?

A. I saw several barrels in there, approximately six or eight. I saw a bucket. I saw a sink with a hose leading outside, out to the west side of that shed. I saw a hot water heater. And I saw a thermometer.

I also saw in that room a shelf built up on the side of the shed which contained an instrument which I didn't know what it was at the time. It was a two-quart Mason jar with a wire screen around it, setting beside a transformer—looked like a high-power transformer.

That is all I saw inside there that I can recall.

Q. What did you do after you saw these items?

A. Mr. Ramsey was standing outside of the shed. I went out and I was curious to find out what that——

Mr. Lavine: I move to strike that answer as to his curiosity.

(Testimony of Charles O. Jones.)

The Court: It may go out about his being curious.

Q. (By Mr. Bender): What did you do?

A. I went outside and talked to Mr. [148] Ramsey.

Q. What did you say to him and what did he say to you, if anything?

Mr. Lavine: I object to that. No proper foundation.

Q. (By Mr. Bender): Who was present besides yourself, if anyone, when you had this conversation with Mr. Ramsey?

A. No one that I recall.

Q. Approximately what time did the conversation take place? How long after you had arrived at the premises did the conversation take place?

A. Approximately 20 minutes.

Q. Where did the conversation take place?

A. Right outside the shed.

Q. What was said in that conversation?

A. I asked him what that thing was on the wall with the transformers and the electrodes running into the jar. And he said it was an airpurifier. And he said—I asked him if it killed the odor of fermenting mash, and he says, “Yes, it helped.”

That is all that was said.

Q. What did you do after this conversation?

A. I went back into the shed, and Investigators Warner and Coughran were opening the boxes and **looking into the jugs**. I opened a bottle, one of the jugs, and smelled the liquid inside and it smelled

(Testimony of Charles O. Jones.)

like whiskey. Investigators Warner and Coughran—or, Investigator Coughran put a hose into [149] the left barrel and extracted a gallon of whiskey.

Q. Where did he place this gallon of whiskey that he extracted?

A. Into a one-gallon jug, and placed it on the floor. And Investigator Warner scratched it with his ring. And I scratched it with his ring.

Mr. Bender: If the court please, may I place the two exhibits, Exhibits 1 and 2 for identification, before the witness?

The Court: Yes.

(Whereupon, the two exhibits were placed before the witness.)

Q. (By Mr. Bender): Mr. Jones, would you inspect Government's Exhibits 1 and 2 for identification and tell us if you have ever seen either of them before? And, if so, where?

A. I saw both of these jugs before.

Q. When and where?

A. I saw them inside of the shed. And they are the ones—that one is the one that was extracted by Investigator Coughran and marked by Warner and myself.

Q. By "that one," you mean Government's Exhibit 1 or 2 for identification? It is marked there.

A. Exhibit No. 1.

Q. Where did you first see Government's Exhibit 2 for [150] identification?

A. It was extracted from a case by Investigator

(Testimony of Charles O. Jones.)

Warner and marked by Investigator Warner and myself.

Q. Then at the time you first saw it, did it have the same color of liquid in it that it now has?

A. It did.

Q. It was not then filled up by Investigator Coughran?

A. Exhibit 2 was not filled up by Investigator Coughran.

Q. At the time that you first saw Exhibit No. 2, did it contain a strip stamp or any stamp over the cap?

A. No, sir.

Q. Who was present at the time that Exhibit No. 1 for identification was obtained, withdrawn from the barrel by Investigator Coughran?

A. Coughran, Warner and myself.

Q. Was the defendant present?

A. No, sir.

Q. What did you do after the two exhibits were first seen by you at that time?

A. After we marked them, I put them in a cardboard carton and carried them to the Government car where I locked them in the trunk.

Q. Was the defendant present at the time you did this? [151]

A. No, sir.

Q. What, if anything, did you do with the two Government Exhibits, Exhibits Nos. 1 and 2 for identification, after you marked them and after you carried them and placed them in your trunk? Where did you take them?

A. Well, I stored them—the next morning I

(Testimony of Charles O. Jones.)

stored them in Room 850, the Government locker there, a safe.

Q. You then did not return to the Government offices that evening?

A. No, sir. I was tired.

Q. How long had you been on duty continually?

A. Approximately 33 hours.

Q. After you stored them in the Government locker the following morning, when is the next time that you saw Exhibits 1 and 2 for identification?

A. When I opened the safe again.

Q. When was that?

A. Oh, during the day some time I opened the safe again and looked inside for some other stuff pertaining to another case, and I saw these.

Q. Did you participate in the taking of the samples which were testified to by the chemist, Mr. Crane, the two small samples which are before you?

A. No, sir.

Q. Directing your attention now back to September 15, [152] 1955, and the Ramsey premises, were you present during a conversation between Mr. Awrey and the defendant, a conversation which concerned what capacity the still had?

A. Yes, sir.

Q. What was said at that time?

Mr. Lavine: I object to that. There is no proper foundation. There is no showing that the response was voluntary.

Q. (By Mr. Bender): Who else was present

(Testimony of Charles O. Jones.)

there than Mr. Awrey and the defendant and yourself? A. No one else.

Q. Approximately what time did this conversation occur? A. Approximately 1:00 o'clock.

Q. What was said at that time?

Mr. Lavine: I object to that. There is no showing that the response was voluntary; violation of the Fourth and Fifth Amendments of the Constitution of the United States.

The Court: Overruled.

The Witness: Investigator Awrey asked Mr. Ramsey what capacity the still was. Ramsey said 100 gallons.

Q. (By Mr. Bender): Did you have any conversation then with the defendant?

A. I asked Mr. Ramsey——

Mr. Lavine: Same objection, your Honor.

The Court: Same ruling. [153]

The Witness: I asked Mr. Ramsey how long it had been since he had operated the still and he said about a month.

Q. (By Mr. Bender): Did this conversation occur before you obtained the sample or after?

A. After.

Mr. Lavine: Same objection; violation of the Fourth and Fifth Amendments.

The Court: Overruled.

Q. (By Mr. Bender): Did you answer?

A. It occurred afterwards.

Q. Did you assist in the destruction of the vari-

(Testimony of Charles O. Jones.)

ous materials and items that were found on the Ramsey premises? A. I did.

Q. Did you subsequently have any conversation with the defendant in the house at 1011-223rd Street?

A. Yes, sir. After the still and all of the parts of the still apparatus were destroyed and all the liquor, I asked the defendant——

Mr. Lavine: I object to that as no proper foundation; no showing that the response was voluntary; violation of due process and violation of the Fourth and Fifth Amendments of the United States Constitution.

Q. (By Mr. Bender): Where did the conversation take place? A. In the living room. [154]

Q. Who was present besides yourself?

A. Just myself.

Q. Was the defendant present?

A. Oh, the defendant, yes, sir.

Q. Approximately what time did the conversation take place? A. Approximately 3:30.

Q. What did you say to the defendant?

Mr. Lavine: Same objection, your Honor; same grounds as specified.

The Court: Same ruling.

The Witness: I asked Ramsey if he was willing to give me a financial statement.

Q. (By Mr. Bender): What did he say?

Mr. Lavine: Same objection, your Honor; violation of due process.

(Testimony of Charles O. Jones.)

The Court: What does that have to do with this case?

Sustained on the ground of immateriality.

Mr. Bender: All right, your Honor.

You may cross-examine.

Cross-Examination

By Mr. Lavine:

Q. You said you were present when the destruction of the various items took place?

A. Yes. [155]

Q. Did you assist in the destruction?

A. Yes.

Q. And how many bottles did you break up?

A. I don't recall.

Q. Did you break up everything except two bottles that you took? Did you and your fellow officers break up everything relating to any liquid contents except the two bottles that you took?

A. I can't testify to what they broke up. I only——

Q. Did you see any liquid after, except the two bottles that you say you took, did you see any liquid left there? A. No, sir.

Q. Now, what time did you leave the place?

A. Approximately 4:00 o'clock.

Q. Were you one of the two last persons to leave? Or were you the last person to leave?

A. I don't know.

Q. Did you see any of your fellow officers there

(Testimony of Charles O. Jones.)

at the time that you left? A. I don't recall.

Q. What did you put on any bottles that were taken?

A. On the two samples that we extracted I used Investigator Warner's ring and scratched "C.O.J." on them.

Q. And who was present when you scratched "C.O.J." on there? [156]

A. Investigator Coughran and Investigator Warner.

Q. Now, did you see Officer Linder there?

A. When we took those samples?

Q. Yes. A. No, sir.

Q. Did you see Officer Linder there at any time?

A. Later in the day.

Q. Did you see any samples that he took?

A. No, sir.

Q. Did you see any initials that he put on any samples? A. No, sir.

Q. What time did you destroy the bottles and articles that you destroyed? What time of day was it?

A. It must have been about 2:30, 3:00 o'clock, somewhere along there.

Q. Now, did you hear any officers call out what was being taken or what was being destroyed?

A. Yes, sir.

Q. And did you hear anyone call—did you hear someone call out that 40 gallons were destroyed?

A. No, sir.

Q. Did you hear anyone call out that 30 gallons

(Testimony of Charles O. Jones.)

were destroyed? A. No, sir.

Q. Or 38 gallons? [157] A. No, sir.

Q. Did you hear anyone call out what number of gallons had been destroyed? A. No, sir.

Q. You were planning to take some liquid in as evidence, weren't you?

A. We had already taken some liquid as evidence.

Q. And did you tell anyone that you had taken some liquid as evidence? A. No.

Q. When was the first time that you told anyone that you had two bottles of evidence?

A. The next morning when I brought them in.

Q. This safe that you have there, where is that safe?

A. It's in Room 850 at 417 South Hill, Los Angeles, Subway Terminal Building.

Q. Room 850 where?

A. Room 850, 417 South Hill.

Q. The Subway Terminal Building?

A. Yes, sir.

Q. And how big is that safe?

A. About four feet across and two feet thick and about six feet tall.

Q. And who else besides you has access to that safe? A. I don't know. [158]

Q. You aren't the only one who has access to it, are you? A. No, sir.

Q. And you weren't the only one on that day, were you, on the day that you brought these bottles in? A. No, sir.

(Testimony of Charles O. Jones.)

Q. When you say you brought them in, were there several other bottles in the safe at that time?

A. Yes, sir.

The Court: Just a minute. What kind of bottles? Perfume, liquor——

The Witness: Liquor.

The Court: Gallon bottles (indicating)?

The Witness: No, sir.

Q. (By Mr. Lavine): Well, you have bottles there in your safe, do you not?

Mr. Bender: Counsel for the Government objects to that question as being incompetent and irrelevant what he has in the safe.

The Court: The objection is sustained. Not what you have, but what was in at that particular time.

Mr. Lavine: It is preliminary. I am going to get to that.

Q. (By Mr. Lavine): You had 5-gallon jugs in your safe, did you not, on that date, September 15th or 16th, 1955? [159]

A. 5-gallon jugs?

Q. Yes. A. No, sir.

Q. No other jugs in there?

A. There were other jugs in there, yes, sir.

Q. What size were they?

A. Quarts, and I think there was possibly one or two one-gallon jugs.

Q. And no 5-gallon jugs? You are testifying under oath now. No other 5-gallon jugs on that date?

A. You mean 5-gallon water jugs full of whiskey?

(Testimony of Charles O. Jones.)

Q. I didn't ask you if they were full of whiskey. I asked you if you had 5-gallon jugs. Do you understand my question?

A. I didn't know whether you meant five one-gallon jugs or one 5-gallon jug.

Q. I am talking about the jugs the same size and type as you have right in front of you.

The Court: This is not a 5-gallon jug. This is a gallon.

Mr. Lavine: I am sorry. Gallon jugs. I am sorry. I stand corrected, your Honor, and I apologize.

Q. (By Mr. Lavine): One-gallon jugs the size of those jugs right there (indicating)?

A. Yes, sir. [160]

Q. You had others in the safe on that day, did you not? A. Yes, sir.

Q. Of the same type and kind, is that correct?

A. Of the jugs?

Q. Yes. A. I don't know, sir.

Q. Now, did those jugs that were in the safe have liquid in them? A. Yes, sir.

Q. And were they jugs with a similar colored material in them? A. Yes, sir.

Q. What time did you go to the safe that next morning? A. About 10 minutes after 8:00.

Q. Did anybody go with you?

A. The safe is in the squad room. They were all there. I mean, I can't recall who was there. But the investigators meet in the squad room in the morning.

Q. Now, did anybody go with you from the squad room or independently of the squad room to

(Testimony of Charles O. Jones.)

the safe when you opened it up and put these jugs in the safe? A. No, sir.

Q. Did anybody else see you put any jugs in the safe? A. I don't know, sir. [161]

Q. Did anybody ever tell you that they had seen you put these jugs in the safe? A. No, sir.

Q. You knew that some question arose about these jugs later on, didn't you? A. Yes, sir.

Q. And did you know that somebody had gone back, somebody from your office had gone back to the premises to try to find two jugs the night before? A. I didn't know that, sir.

Q. You didn't know that. You did learn about it later, didn't you? A. Yes, sir.

Q. And you learned, did you not, that somebody was supposed to have forgotten the two jugs and left them there, isn't that right? A. Yes, sir.

Q. And that one of your officers went back there to try to find those two jugs and he didn't find them, isn't that right? A. No, sir.

Q. Didn't you learn that somebody did go back from your squad and try to find those jugs on the night of September 15th and didn't find two jugs there that he was looking for? [162]

A. Let me qualify my answer. The first time——

Mr. Lavine: You can answer that question yes or no.

Will you repeat the question, please? Read the question.

(Question read.)

(Testimony of Charles O. Jones.)

Mr. Bender: If your Honor please, the witness may, of course, answer the question and then explain his answer.

The Court: Yes. Let him answer the question first and then explain his answer.

The Witness: Yes, sir. I learned that in court yesterday.

Q. (By Mr. Lavine): And you never learned about it before yesterday?

A. Now, specifically, the question was had I learned about the two men going back to look for the jugs?

Q. You never heard about that before yesterday? A. No, sir, not that.

Q. Now, how long did it take you to break up these various articles on the premises?

A. I would say about an hour, sir.

Q. Did you dump the sugar? A. I didn't.

Q. Did you take it away with you?

A. No, sir.

Q. Did you ever see any of this apparatus in operation? [163] A. No, sir.

Q. Did you put this so-called blower on, or air purifier? Did you try to put it on?

A. No, sir.

Q. Do you know whether it was working or not?

A. No, sir.

Q. Do you know when it had last been worked, if it ever had been? A. No.

Q. Did you see if you could smell anything or whether any fumes were killed by its operation?

(Testimony of Charles O. Jones.)

A. No.

Q. Did you go to these three garages or sheds with some other officer? A. Yes, sir.

Q. And at the time that you went there the doors were locked, were they? A. Yes, sir.

Q. You didn't have any search warrant yourself for the particular garages, did you?

A. The premises only, sir.

Q. The search warrant that we have here?

A. Yes, sir.

Q. Now, did you assist in making the inventory?

Mr. Lavine: May I approach the witness, your Honor? [164]

The Court: Yes.

Q. (By Mr. Lavine): Are you familiar with this inventory? A. I have seen it.

Q. And did you see it on September 15th?

A. Yes, sir.

Q. Did you assist in making it?

A. Only—not on this one, no, sir.

Q. Well, did you assist in making any inventory? Did you make some other notes from which this inventory was copied?

A. I started the inventory, yes, sir.

Q. And do you have your notes on that where you started it?

A. No, sir. I threw them away.

Q. Did you put down the number of gallons in the barrel on your notes? A. No, sir.

Q. Did you put the number of gallons that were

(Testimony of Charles O. Jones.)

destroyed on your notes? A. No, sir.

Q. Did you put the number of gallons that you took on your notes? A. Yes.

Q. And you destroyed that?

A. Yes, sir. [165]

Q. You do keep an extensive file, don't you, of all your work? Is that correct? A. Yes, sir.

Q. And you haven't kept that in the file of your case, is that correct? A. That's right.

Q. Now, when you took those two jugs on September 15th, were they in the exact same condition that they are now? A. Yes, sir.

Q. Now, in connection with this inventory, were these articles destroyed that are listed on the inventory as having been destroyed?

A. I didn't destroy all of this.

Q. Did you see it destroyed?

A. Not all of it, I didn't see destroyed.

Q. What part of that inventory did you not see destroyed?

A. I destroyed that brass pump and the motor and some of the barrels. And that is all.

Q. Did you see the other articles destroyed as listed here?

A. I saw several other barrels destroyed.

Q. And who was doing the destroying?

A. Investigators Travis, Warner and Coughran, and Bruce Awrey. [166]

Q. Did Investigator Warner make up this inventory in your presence? A. Part of it.

(Testimony of Charles O. Jones.)

Q. Did you see him give a copy of it to the defendant? A. No, sir.

Mr. Lavine: I would like to offer the search warrant, and the inventory in evidence as defendant's exhibit.

The Court: It may be received in evidence as Defendant's Exhibit A.

(The exhibit referred to was marked Defendant's Exhibit A and received in evidence.)

Q. (By Mr. Lavine): You said you had some conversation with the defendant about how long he operated the still. Who was present in that conversation? A. Investigator Bruce Awrey.

Q. Did you make any notes of it?

A. No, sir.

Q. Didn't you regard such a statement as important enough to make any notes on it?

A. Yes, sir.

Mr. Lavine: That is all.

Redirect Examination

By Mr. Bender:

Q. Do you have any difficulty in remembering the statement that was made? [167]

Mr. Lavine: I object to that as calling for a conclusion of the witness.

The Court: Sustained.

Mr. Bender: Counsel just asked if he regarded——

(Testimony of Charles O. Jones.)

The Court: You should have objected. If you would have objected, I would have sustained the objection.

Mr. Bender: No further questions of this witness.

(Witness excused.)

Mr. Bender: May we recall Mr. Awrey to the stand?

The Court: Yes.

Mr. Bender: Thank you. Mr. Awrey.

BRUCE AWREY

a witness called on behalf of the plaintiff, having been previously sworn, was recalled and testified further as follows:

Direct Examination

By Mr. Bender:

Q. Would you examine the two small bottles which are before you which are marked Government's Exhibits Nos. 18 and 19 for identification only and read the labeling on them to yourself? Read everything on the label.

Mr. Lavine: Just a minute. I object to that as no proper foundation being laid for the reading of any label.

The Court: Doesn't the witness have a right to examine the thing he is going to identify? [168]

Mr. Lavine: He has a right to examine the substance. If your Honor please, what I am objecting

(Testimony of Bruce Awrey.)

to is that if this is for the purpose of refreshing his memory there is a foundation that has to be laid. If it is not——

The Court: Well, I don't know what the purpose is. The only question is, "Will you examine the exhibit."

Mr. Lavine: The question is will he examine the label, not the exhibit, your Honor.

The Court: The objection is overruled. Proceed.

Q. (By Mr. Bender): Mr. Awrey, have you had an opportunity and have you, in fact, examined each of Government's Exhibits 18 and 19 for identification? A. I have.

Q. Have you ever seen either of them before?

A. I have.

Q. Where did you first see them?

A. On September 16th Investigator Warner gave me these two samples, along with another sample, to mail to the United States chemist in San Francisco.

Q. And did you mail them to the United States chemist in San Francisco?

A. I mailed these three samples, these two and another sample, to the United States chemist in San Francisco.

Q. Did you obtain two samples from any jug or any other container? [169]

A. I did not. I received them directly from Investigator Warner.

Mr. Bender: No further questions.

(Testimony of Bruce Awrey.)

Cross-Examination

By Mr. Lavine:

Q. What time of the day did you receive the samples?

A. Oh, I don't remember exactly. Maybe——

Q. Morning or afternoon or night?

A. As I remember, it was around noon.

Q. How were the samples handed to you?

A. As one person would hand them to another. "Here's a couple of samples. Will you mail them for me?"

Q. Were they just like they are there, or were they in a box?

A. They were not in a box. They were individual samples; three of them; these two and another.

Q. Referring now to Government's Exhibit No. 18, did you see how much liquid was in the bottle when you took it?

A. Yes, I noticed.

Q. Well, was it the same amount of liquid as is here now?

A. Both bottles were fuller, up about this high (indicating), as I remember.

Q. Indicating to the rim of the bottle?

A. Yes. I can't testify exactly how full they were, [170] but, as I remember, all the bottle samples we send, they are fuller than this.

Q. Are you giving us your answer now because that is the general practice or because you remember specifically what was here?

(Testimony of Bruce Awrey.)

A. Because I know there was nothing unusual about the samples when they were given to me. If they had been low I would have noticed it.

Q. You didn't pay any particular attention whether it was the same or fuller or not, isn't that a fact now?

A. I do with all the samples. And I also make sure the cork is tight.

Q. I am just asking you now about the contents. You didn't pay any particular attention to the amount of the contents, isn't that right?

A. They were fuller than they are now.

Q. That doesn't answer my question. You didn't pay any particular attention to the contents, isn't that right?

A. Not particularly, except—

Mr. Bender: Excuse me. The Government objects to the question as asking for a conclusion whether he paid any particular attention.

The Court: Sustained. What difference does it make whether they were full or half full?

Mr. Lavine: There is important testimony that ultimately [171] will appear in this case.

The Witness: I would definitely say they were fuller than this because if they had not been full I would have asked the boys to fill them up. I have sent hundreds and hundreds of samples.

Q. (By Mr. Lavine): Did you pack these samples?

A. I did.

Q. What did you pack them in?

A. I packed them in a small carton.

Q. Where did the third one come from?

(Testimony of Bruce Awrey.)

A. That was another sample they were sending.

Q. Of these? A. Not of this.

The Court: In another case?

The Witness: Another case, sir.

Q. (By Mr. Lavine): Now, did you open the bottles and smell them? A. No, I didn't.

Q. Did you do that at the time? A. No.

Q. Did you make any examination to see whether it was the same color as any other liquids that you had around?

A. I made no examination whatsoever. I tighten the corks on all the samples to make sure they are tight.

Q. Did you see who poured the liquid into these two [171-A] bottles? A. I did not.

Q. Did you see where they were poured or know when they were poured?

A. No. I merely—the boys were busy and I merely packed them and mailed the samples to help them.

Mr. Lavine: I have no further questions of this witness.

Mr. Bender: No further questions of this witness.

The Court: Mr. Warner, when he was on the stand, testified that he had taken the samples from the big bottles.

Mr. Bender: I didn't go into that, and I should have.

The Court: Is Mr. Warner here?

Mr. Bender: Yes.

The Court: Let's clear up that point right now while we have a chance.

You may step down.

(Witness excused.)

M. F. WARNER

called as a witness on behalf of the plaintiff, having been previously sworn, was recalled and testified as follows:

Direct Examination

The Court: Mr. Warner, did you have anything to do with the obtaining of the samples from the larger jugs, which are Government's Exhibits 1 and 2 for identification?

The Witness: Yes, sir. [172]

The Court: What did you do in that regard?

The Witness: I took a sample from each of the jugs, placed it in an 8-ounce sample bottle, fixed the label thereto, initialed it and gave it to Mr. Awrey.

The Court: And from which jugs did you take the samples from? Can you tell us?

The Witness: Yes. This sample was taken from this jug.

The Court: That doesn't mean anything. Give us the number.

The Witness: Exhibit 19 was taken from Exhibit 2.

The Court: You took it?

The Witness: Yes, sir.

Q. (By Mr. Bender): What about Exhibit 18 for identification?

(Testimony of M. F. Warner.)

A. It was taken from Exhibit No. 1.

Q. Approximately what time of the day was it, do you recall, that you took the samples?

A. Some time after 8:00 o'clock.

Q. Was anyone else present when you took the samples? A. I don't recall.

Mr. Bender: You may cross-examine.

The Court: After you took the samples, what did you do with them?

The Witness: I marked them with my initials and then I handed them to Mr. Awrey for [173] mailing.

The Court: And you asked him to mail them for you?

The Witness: Yes.

The Court: Any questions?

Mr. Lavine: Yes, your Honor.

Cross-Examination

By Mr. Lavine:

Q. You said that you took the samples some time after 8:00 o'clock? A. Yes.

Q. What time after 8:00 o'clock?

A. Pardon?

Q. What time after 8:00 o'clock?

A. Some time before noon.

Q. What time?

A. I didn't make a note of the time.

Q. How many samples did you take?

A. One from each bottle.

(Testimony of M. F. Warner.)

Q. Did you take a third sample from some other bottle? A. Yes, sir.

Q. And you did that on the 16th, you say?

A. Yes, sir.

Q. Now, how did you pour the sample from one bottle into the other?

A. By removing the cap from the jug and the cap from the sample bottle and pouring it in. [174]

Q. And did you examine the bottle that you were pouring the sample into to see whether it was clean or not? A. Not particularly, no.

Q. Did you pour the liquid into Exhibit 19 from Exhibit 1 or Exhibit 2? A. Exhibit 2.

Q. Well, now, what did you do with the sample after you poured it into the bottle?

A. I sat the jug on my desk with the sample in front of it.

The Court: When did you make a writing upon the sample?

The Witness: After I poured all three samples out. In other words, I had three gallon jugs and three sample bottles. As I would pour it from this jug into the sample bottle I capped both bottles and placed the sample in front of the jug from which I was taking the sample.

Q. (By Mr. Lavine): Did you take the gallon jugs out of the safe? A. Yes, sir.

Q. And did you put them on some table or counter that you have there in the investigation room?

A. I put them on my desk.

Q. Where did you do the pouring, on the desk?

(Testimony of M. F. Warner.)

A. Yes, sir.

Mr. Lavine: May I approach the witness, your Honor? [175]

The Court: Yes.

Q. (By Mr. Lavine): Did you put the caps back on these bottles after you poured the sample in?

A. Yes, sir.

Q. And did you do anything else with the bottles?

A. After I put the sample in?

Q. Yes.

A. Well, I marked them, prepared a label for them.

Q. Now, then, how much liquid did you pour into the bottle?

A. Well, I always pour them full.

Q. Well, are you answering the question now because that is your general practice or do you remember what you did with these two bottles?

A. Not particularly, no.

Q. I see. Did you make any further test to see whether the liquid tasted like it was a distilled spirit?

A. No, sir.

Mr. Lavine: That is all I have.

Mr. Bender: The Government moves that Government's Exhibits Nos. 1, 2, 18 and 19 for identification only be admitted in evidence.

Mr. Lavine: I object. There has been no proper foundation. I object on the further ground that they were illegally seized in violation of the Fourth and Fifth Amendments. [176] violation of due process

(Testimony of M. F. Warner.)

clause of the Fifth Amendment of the Constitution of the United States.

The Court: The objection is overruled. They may be received in evidence.

The Clerk: Exhibits 1, 2, 18 and 19 in evidence.

(The exhibits referred to were marked Plaintiff's Exhibits 1, 2, 18 and 19 and received in evidence.)

Mr. Lavine: May I ask this witness one additional question?

The Court: All right.

Mr. Lavine: Did you make out the inventory in respect to the liquor that was taken and the liquor that was destroyed?

The Witness: Yes, sir.

Mr. Lavine: What time did you make out your inventory?

The Witness: I think I answered that before. About 3:15.

Mr. Lavine: I thought you had, but I wanted to be sure.

That is all.

The Court: You may step down.

(Witness excused.)

The Court: May I inquire how many more witnesses you have?

Mr. Bender: The Government has two more witnesses. They will not take so long as the others. At least, we anticipate [177] they will not.

The Court: Mr. Lavine, have you any authorities to support your instruction No. 6? If you have, I would like to have them.

Mr. Lavine: Yes, your Honor. I will have them for your Honor.

The Court: The first sentence is particularly what I am interested in.

Mr. Lavine: All right. Very well. I will have it at 2:00.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again, before we separate, it is my duty to admonish you not to discuss the case with anyone and not to allow anyone to discuss it with you; not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition we will now recess until 2:00 o'clock this afternoon.

(Whereupon, a recess was taken until 2:00 o'clock p.m. of the same day.) [178]

Wednesday, December 21, 1955—2:00 P.M.

The Court: Is it stipulated that the jury is present and in the box?

Mr. Lavine: So stipulated, your Honor.

Mr. Bender: So stipulated. And the defendant is present in court.

Your Honor, at this time may the Government and opposing counsel approach the bench briefly?

The Court: Yes.

(Whereupon, the following proceedings were had outside the hearing of the jury and the defendant.)

Mr. Bender: Your Honor, in the interest of shortening the trial we have refrained from adducing any testimony concerning another incident which occurred on these premises of the defendant on September 14, 1955. However, in the interest of, perhaps, an abundance of caution that it be established that the defendant was engaged as charged in the indictment in a business of a distillery the Government is contempating asking its next witness, interrogating its next witness concerning the transaction which occurred on September 14, 1955; in other words, the transaction where a man named Warren was known to have entered the premises without any liquor, un-tax-paid spirits, and left the premises with un-tax-paid distilled spirits. The purpose in telling the [179] court this, advising the court of this and opposing counsel, is to make certain that the court would not feel that it would be error to go into that and present it in the presence of the jury by merely questioning the witness.

Mr. Lavine: We would object to any introduction of any testimony about someone on the 14th which is not alleged in this indictment. The indictment alleges specific transactions. The dates are given specifically as the 15th of September, and any transaction prior thereto would be incompetent, irrelevant and immaterial and not within the issues of this case.

The Court: Let me have the file.

(Whereupon, the file was handed to the court.)

Mr. Bender: The Government can easily answer that objection because as your Honor knows in Federal court there are numerous cases——

The Court: It says, “on or about September 15th.” It doesn’t say on the 15th. It says on or about.

Mr. Bender: In fact, all we need prove is that it happened some time prior to the trial.

The Court: I think it is established by the evidence, without a doubt, that on the day the search was made the still was not in operation.

Mr. Bender: That is true.

The Court: No question about that. Now, if they convict [180] him of being a distiller or a rectifier they are going to have to show it was done prior to the 15th.

Mr. Lavine: Well, proof of any transaction on the 14th—I don’t understand from the Government’s offer of proof they are offering to prove there was any operation of the still on the 14th.

Mr. Bender: We are offering to prove, and intend to prove, he was engaged in this business——

The Court: What are you going to prove?

Mr. Bender: ——of a distiller as alleged in Counts Two, Three and——

The Court: What is your evidence? Was he a distiller on that day?

Mr. Bender: Your Honor, a man doesn’t have to

be operating his plant on one specific day in order to be——

The Court: Was he selling liquor?

Mr. Bender: That is it exactly. He possessed this large quantity. Like I indicated, we feel the evidence is sufficient, but out of an abundance of caution we feel the Government should introduce this additional testimony now.

Mr. Lavine: Well, I object to it as being incompetent, irrelevant and immaterial; not within the issues of this trial as to what was done in connection with someone else.

The Court: You go ahead, and you can make your objections and I will rule upon them. [181]

I asked for your authorities.

Mr. Lavine: 196 Cal., page 408. And 169 Cal., 408.

The Court: Both 408?

Mr. Lavine: Just a minute. I gave you the wrong one. 169 Cal. 408 and 196 Cal. 404, 405; and then under headnote 3. I haven't read these other two cases.

The Court: I will read these two.

Mr. Bender: Before counsel departs, the Government would like to object in that these are California citations. I would like to cite for the court *Opper vs. United States*, 3048 U.S. 84, and at page 93.

The Court: All right.

(Whereupon, the following proceedings were had in the hearing and presence of the jury and the defendant.)

The Court: Call your next witness.

Mr. Bender: The Government will call as its next witness Mr. Elroy W. Travis.

ELROY W. TRAVIS

called as a witness on behalf of the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Elroy W. Travis, T-r-a-v-i-s.

The Court: You will have to keep your voice up so the attorneys and the jury can hear you.

The Witness: Yes, sir. [182]

Direct Examination

By Mr. Bender:

Q. Mr. Travis, what is your profession or occupation?

A. Investigator for the Alcohol & Tobacco Tax Division, Internal Revenue Service.

Q. Directing your attention to on or about September 14, 1955, were you on duty that day?

A. Yes, sir.

Q. And were you in the company of any other agent or investigator? A. Yes.

Q. Who was with you at that time?

A. Investigator Jones and myself in one car and Investigator Coughran and Investigator Warner in another.

Q. And on that date, did you have occasion to go to the premises known as 1011 and 1011½ West 223rd Street, Torrance, California?

(Testimony of Elroy W. Travis.)

A. Yes, sir.

Q. What time did you arrive there?

A. Approximately 9:15 p.m.

Q. Will you relate what you observed occur, if anything, just five minutes prior and up to the time that you arrived at the premises, and subsequent to your arrival?

Mr. Lavine: I object to that as incompetent, irrelevant and immaterial. [183]

The Court: Overruled.

The Witness: We followed a 1946 Ford coupe prior to his—to the coupe's driving into the west driveway, which is commonly called 1011½ West 223rd Street. The car was driven by one William J. Warren.

Q. After you followed this car which was driven into the premises on 223rd Street, what did you do then?

Mr. Lavine: I object to that as incompetent, irrelevant and immaterial; not within the issues of this case.

The Court: Will counsel please approach the bench?

(Whereupon, the following proceedings were had outside the hearing of the jury and the defendant.)

The Court: You know, I tried that case and the witnesses all testified that they did not see any liquor put in that car.

Mr. Bender: That is true, absolutely. But testi-

(Testimony of Elroy W. Travis.)

mony was introduced to show that the car left the premises and then the liquor was found in the car. Certainly no one at any time ever saw that man place the liquor in the car. It was never contended they did.

The Court: But none of the witnesses were ever able to testify that any liquor was put in the car at that place.

Mr. Bender: But they testified they checked the car before it was driven to that place and it contained no liquor.

The Court: Well, if we are going into that case and [184] retry it, we will be here a couple more days.

Is this the only testimony you have concerning the prior sales?

Mr. Bender: Yes, your Honor.

Mr. Lavine: I object to it, your Honor, as being incompetent, irrelevant and immaterial; not within the issues of this case. And the Government's own offer shows they don't have any evidence that is relevant to this case, and I submit that it is not proper and that it would be highly prejudicial to this defendant to bring in testimony about somebody arrested for a separate crime not charged in the indictment; at least not charged jointly in this case in any shape, manner or form, and we can't be prejudiced by the trial of somebody else, what somebody else did.

Mr. Bender: If counsel means that it will help establish defendant's guilt, he is correct. It is an

(Testimony of Elroy W. Travis.)

additional form of evidence. It is additional evidence of the defendant's guilt. As we stated earlier, we believe the evidence is sufficient now, but I think this should be introduced.

The Court: I think you had better be satisfied with what you have. You might be jeopardizing your entire case.

Mr. Bender: That is why I approached the bench before on the matter.

The Court: Well, I am going to sustain the objection.

(Whereupon, the following proceedings were had in the [185] hearing and presence of the jury and the defendant.)

The Court: The objection is sustained.

Q. (By Mr. Bender): Directing your attention, Mr. Travis, to on or about September 15, 1955, were you one of the investigators who participated in the arrest, or who was present on the premises of the Ramsey premises on September 15, 1955?

A. Yes, sir.

Q. Will you relate what you observed on the premises at that time which, if possible, you can testify to and that was not testified to by any of the other officers?

Perhaps I have overstated my question.

Will you relate what occurred on September 15, 1955, at the Ramsey premises?

A. After driving in the driveway I waited in the driveway until Investigator Jones started to-

(Testimony of Elroy W. Travis.)

ward the small building. Subsequent to that I approached the rear end of the house, of the living quarters, and met one of the investigators—I don't now remember if it was Investigator Warner or Investigator Coughran. We started—I went back in the rearmost part of the small house and observed Investigator Jones come out, and we walked toward the doorway of the garage, which has been described as the place where the distilled spirits were found. We got the odor or the aroma of what we thought was distilled spirits. And Mr. Awrey asked me to get the defendant with the keys. I immediately went into [186] the living quarters and asked the defendant for the keys to the garage.

Q. Did the defendant then hand you the keys?

A. No, sir, he did not.

Q. What did he do? A. He did nothing.

Q. What did you or anyone else say in his presence at that time?

A. I advised him that out of due respect to his property we didn't care to break the law; that actually his giving us the keys didn't really make any difference. However, I suggested he open it if he had the keys. At that time he walked out with Investigator Coughran. I remained in the house and had a conversation with the two women.

Q. What occurred after that that you observed?

A. Shortly thereafter at approximately 10 or 15 minutes later, I went back to the rearmost part of the premises and was looking around—that is, searching the various outhouses. And I returned

(Testimony of Elroy W. Travis.)

to the garage, the double-door garage, and at that time Investigator Awrey said that the defendant wanted to change his clothing. And I went with the defendant in his house while he was changing his clothes.

During the time I was in the house I asked the defendant—I advised him of his constitutional rights, and he replied that he was familiar with it, and words to the effect that he [187] was not an amateur. I told him that I wanted to ask him a few questions.

Q. What did he say?

A. Well, he didn't say anything after that.

Q. Did you say anything further?

A. I did not ask him any more questions that I can recall because I felt that there would be little co-operation.

After he had changed clothing we went back out to the house that has been described before with the double garage doors where the distilled spirits were found.

Q. For approximately how long was he in the house changing his clothing, if you can estimate?

A. Approximately half an hour.

Q. What did he wear, and what was he wearing before he went into the house to change his clothes?

A. As best I can recall, light-colored slacks.

Q. What did he change into?

A. He changed into a suit.

Q. After changing into the suit, what did he do and what did you do?

(Testimony of Elroy W. Travis.)

A. After the conversation in the kitchen, after that we walked out to the double-door garage premises where we found the distilled spirits where Investigator Coughran was there and——

Q. Had you found the distilled spirits before the [188] defendant went into the house to change his clothing? A. Yes, sir.

Q. Did you participate at all, or were you present at the time that Investigators Warner and Jones and Coughran testified that Government's Exhibits Nos. 1 and 2, the samples, were obtained?

A. No, sir, I was not there at the time.

Q. Continue. Relate what you did observe after you returned with the defendant on the outside.

A. In the presence of the defendant, Investigator Coughran and myself, the defendant made a remark that—not in the exact words, perhaps, that I am going to relate, but to the effect that he had a hunch that the 12-gallon deal was a phony.

Q. Did he state anything further?

A. No, sir.

Q. Were you present at any other conversations between the defendant, or in the presence of the defendant, which you have not testified to and which you specifically recall? A. Not that I recall.

Mr. Bender: You may cross-examine.

Cross-Examination

By Mr. Lavine:

Q. Mr. Travis, what time did you get there?

A. At the premises? [189]

(Testimony of Elroy W. Travis.)

Q. Yes. A. Around——

Q. On the 15th of September, I am talking about. A. 12:20, sir.

Q. 12:20? A. 12:20 p.m.

Q. Who else was with you at the time?

A. I was riding in the car driven by Investigator Coughran and accompanied by Investigator Jones.

Q. When you decided to go into these three garages you told the defendant that unless he gave you the keys you were going to smash down the doors, didn't you?

A. No, I did not, sir. I advised him that it was not necessary to have the keys, that we could break the doors down—that is, break the lock off the door.

Q. And did you have the search warrant with you at that time?

A. No, I did not have the search warrant.

Q. Did you think you had a right to break down the lock of the door without a search warrant for that specific building? A. No, sir.

Q. Did you tell the defendant that you would break the doors down? A. I did not. [190]

Q. Did you tell him that if he had any respect for his property he would let you have the keys?

A. No, sir. I said that with all due respect for his property we did not want to break the lock. He had hesitated in such a manner that he seemed to be reluctant—if he had any keys he made no remark that he was willing to open the door.

Q. And you then told him that if he had any

(Testimony of Elroy W. Travis.)

respect for the property there that he better open the doors, or words to that effect?

A. I did not say that. You are twisting——

Q. You were very gentle with him?

A. That's right, sir.

Q. Were you armed at the time?

A. We are always armed, sir.

Q. Had you taken any pickaxes out there or other weapons to break down locks and doors?

A. No, sir.

Q. Did you have any in the car at the time?

A. No, sir.

Q. Well, after you made that statement to the defendant that you say you made to the defendant, you went out with the defendant?

A. I did not go out with the defendant.

Q. Who went out with him? [191]

A. Investigator Coughran.

Q. Then did you join them later on?

A. Yes, sir. No, I did not join—as I recall, I did not join any of the investigators with the defendant prior to my going back into the house for him to change his clothing.

Q. How long did you stay out there that day?

A. We left around 3:30, or a quarter to 4:00.

Q. And had all of the things that were listed in this inventory been destroyed at that time?

A. I couldn't testify that all had been destroyed at the time. I remember what I destroyed.

Q. What did you destroy?

(Testimony of Elroy W. Travis.)

A. I remember destroying a 5-gallon water container of distilled spirits.

Mr. Lavine: I move to strike the "distilled spirits" as a conclusion of the witness, your Honor.

The Court: Is there any dispute that there was distilled spirits? When we originally started there was. But we have all this testimony now.

Mr. Lavine: As far as this 5-gallon container there is.

The Court: It may go out. Substitute "liquid" instead of "distilled spirits."

Q. (By Mr. Lavine): You didn't examine what was in this bottle, did you? [192] A. No, sir.

Q. You didn't take any sample of what was in this bottle? A. No, sir.

Q. You didn't, as a matter of fact, take any samples of any of the bottles that you destroyed, did you? A. No.

Q. And you didn't see anybody else take any samples of the bottles that they destroyed?

A. No, I did not.

Q. Now, you destroyed this 5-gallon bottle. What else did you destroy?

A. I punctured holes in the remains of the pot, the copper pot.

Q. And what else did you destroy?

A. A hydrometer, a thermometer and several barrels.

Q. You didn't see—pardon me. Are you through?

(Testimony of Elroy W. Travis.)

A. And several—not several but a few, more than three, I would say, of the gallon jugs.

Q. Were those empty gallon jugs?

A. They contained a liquid appearing to me as whiskey.

Q. Did you destroy all the empty jugs?

A. I didn't destroy any empty jugs.

Q. Did you take any jugs with you, yourself?

A. No, sir. [193]

Q. As far as you could see at the time you left, were all the jugs on the premises destroyed?

A. Well, I had no reason to believe that it was otherwise.

Mr. Lavine: That is all.

Redirect Examination

By Mr. Bender:

Q. Mr. Travis, did you see Investigator Awrey serve the search warrant on the defendant?

A. No, sir, I didn't.

Q. At approximately what time, in point of time, how long after you had arrived on the premises did you have this conversation with the defendant concerning the key?

A. Approximately five minutes to 1:00 or 1:00 o'clock—in the neighborhood of 1:00 o'clock.

Q. More than a half hour after you had been on the premises? A. Yes.

Mr. Bender: That is all.

(Testimony of Elroy W. Travis.)

Recross-Examination

By Mr. Lavine:

Q. You didn't see the defendant at any time operate any of the apparatus that you destroyed, did you?

A. No, sir; I didn't see him operate the still.

Q. You didn't see him handle any of the bottles or [194] jugs, did you, while you were on the premises on that date? A. No, sir.

Mr. Lavine: That is all.

Mr. Bender: No further questions of this witness, your Honor.

The Court: Step down.

(Witness excused.)

Mr. Bender: The Government calls as its last witness John J. Linder, L-i-n-d-e-r.

JOHN J. LINDER

called as a witness on behalf of the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: John J. Linder.

Direct Examination

By Mr. Bender:

Q. What is your profession or occupation?

A. Investigator for the Alcohol and Tobacco Tax Division, United States Treasury Department.

(Testimony of John J. Linder.)

Q. Do you have a position or capacity of being in charge of anything?

A. I am. I am the group leader of the enforcement officers, Los Angeles office.

Q. Directing your attention to on or about September 15, 1955, did you go to the premises known as 1011 or 1011½ [195] West 223rd Street, Torrance, California? A. I did.

Q. Did you go there in the company of Investigators Warner, Jones, Travis or Coughran?

A. I did not?

Q. Or Awrey? A. No, sir.

Q. What time did you arrive at the premises?

A. About 2:00 o'clock in the afternoon.

Q. What did you do upon your arrival at the premises?

A. I got in touch with Investigator Awrey here who had executed the search warrant. He was in charge. And I asked him what he had found, and he showed me the distilled spirits and the still and the other equipment, sugar and some malt.

Mr. Lavine: I move to strike the answer "distilled spirits" as a conclusion of this witness, your Honor.

The Court: Well, I think as far as this witness is concerned it may go out. He may testify he was shown some alleged distilled spirits.

Q. (By Mr. Bender): And you do so testify?

A. Yes, sir. I tasted it and smelled it and it tasted like whiskey to me.

Q. What did you do after that?

(Testimony of John J. Linder.)

A. I asked them who the man was from whom they had [196] seized it and they pointed out Milton Ramsey, who is sitting at the counsel table right there (indicating). And I talked to Ramsey about the equipment and the distilled spirits and the whiskey, as I know it. And he said it was his; it was his operation.

Mr. Lavine: I object to this voluntary statement of this witness. This witness is not being asked any of these questions.

Mr. Bender: Your Honor, in a government court——

The Court: Denied.

The Witness: And I asked him what——

Mr. Lavine: Just a moment. I object to any conversations. There has been no proper foundation laid; no showing that the statement was free and voluntary.

The Court: Well, I will sustain it upon the ground of improper foundation.

Q. (By Mr. Bender): Who was present at the time, other than yourself and the defendant, in this conversation?

A. Several of the other investigators were standing around there. I don't know which ones in particular.

Q. Approximately what time did this conversation take place?

A. I would say around 10 or 15 minutes after 2:00 in the afternoon of September 15th, 1955.

Q. Will you relate the conversation? [197]

(Testimony of John J. Linder.)

Mr. Lavine: I object to that as no proper foundation; no showing that it is free and voluntary; violation of the Fourth and Fifth Amendments of the Constitution of the United States.

The Court: Overruled.

The Witness: I asked Ramsey if these jugs of liquor belonged to him. And he said yes.

I said, "Does that still belong to you?"

He said, "Yes."

"How long have you been operating it?"

And he says, "For quite some time."

And I said, "Who do those two barrels back there belong to?"

He says, "Those are mine." And he showed me the method in which he aged the liquor that he put into this 50-gallon barrel.

I then asked him who owned a Studebaker automobile that was standing close to the driveway. He told me that one of his employee's or his mother's employee, a maid, owned the car. I went over and looked in the rider's compartment, in the small rear seat compartment. I saw nothing. I asked for keys to open up the trunk of the car and Ramsey said he didn't have them, that the maid had them.

I went in the house with Ramsey and talked to the maid, and she said she did not have a key for the rear of that [198] trunk. I asked Ramsey—

Mr. Lavine: I move to strike the last answer as hearsay, your Honor; not in the presence of the defendant.

(Testimony of John J. Linder.)

Mr. Bender: Yes, your Honor, the Government accedes to that.

The Court: Go on.

Q. (By Mr. Bender): Did you have a conversation with the maid?

A. I did. And Ramsey was there with me.

Mr. Bender: Oh. In that event the Government withdraws——

Mr. Lavine: I withdraw the objection if Ramsey was there.

The Witness: Ramsey was with me continually from the time I got there until—well, maybe for five or 10 minutes, to a period of about 5:00 p.m. on September 15, 1955, at which time I left him in the Office of the United States Commissioner. No, I took him up to the Marshal's office and left him there.

Q. (By Mr. Bender): What time did you leave the Ramsey premises?

A. About 3:30 to 4:00 o'clock.

Q. Have you now related all the conversation that you had with the defendant that you recall on September 15, 1955?

A. I asked him specifically why he used—what the malt was doing there, that particular can of malt.

He said, "That is something I add to the mash in the [199] stuff that I make here. It adds a little different flavor to it."

Mr. Lavine: Your Honor, may it be understood that my objection goes to all this conversation?

(Testimony of John J. Linder.)

The Court: Yes. You have a continuing objection. Same ruling.

Mr. Lavine: Violation of the Fourth and Fifth Amendments of the Constitution of the United States; no proper foundation laid as to its being free and voluntary.

The Witness: I then said to Ramsey—I then told Ramsey that I had never seen malt used in an illicit distillery since I had been a member of the Alcohol Tax Unit.

He said, “Well, this is one of my own ideas and I have worked it out myself. I am experimenting with it; have been for a long time. I have a good product here.”

And he then went on to relate to me that he had taken a gallon of this whiskey, and he used the term “whiskey,” and had given it to a man and a woman one afternoon and that they had drunk that entire gallon and the next day they got up, they felt good and didn’t have a headache due to his process of aging.

I then said to Ramsey, “Did you ever sell any of this stuff?” He said, “Yes.”

I says, “To whom did you sell it? I would like to have a list of your customers.” [200]

He says, “You got my big one last night.”

That conversation about the customer took place in the Studebaker automobile while Ramsey and I were in it on our way over to Torrance to have a locksmith pick the lock on the trunk of the Studebaker.

(Testimony of John J. Linder.)

Q. Was Ramsey with you when you took it to the locksmith's?

A. He was. He paid the bill. I think it cost a dollar and a half.

Q. Did you find any jugs or any substance which appeared to be liquor in the trunk of the Studebaker? A. No signs whatsoever.

Q. What did you do then?

A. We then drove back to the house.

Do you want me, counsel, to go on and tell all my relations with Ramsey that day?

Q. Just for the present time——

Mr. Lavine: Now, just a minute. I object to this witness' voluntary answers, your Honor.

The Court: Supposing you proceed, Mr. Bender.

Mr. Bender: Yes, your Honor.

Q. (By Mr. Bender): Mr. Linder, just staying now on September 15th for the present——

A. Yes, sir.

Q. ——What if anything did you do on those premises at [201] any time with reference to obtaining samples?

A. Shortly after I arrived there at 2:00 o'clock I looked into this room in which the two aging barrels were located, and a large quantity of liquid in gallon jugs that were stored in there. Ramsey was right there with me. I asked Coughran to help me fill up the jug, one of these one-gallon jugs, from this aging barrel. I then took one of the one-gallon jugs out of the cartons and I put them down on the ground. I smelled them. I knew what was in them.

(Testimony of John J. Linder.)

And then I marked the tops of them. I believe I put a "B" on the white cap of one, and that white cap is similar to the one that is on this exhibit here, that one-gallon jug. And I put a "C" on the other one; "C" meaning carton and "B" meaning barrel. I am not positive. I might have used other letters. But if I see the caps, I will identify them.

Q. Well, did Coughran tell you that he had participated in withdrawing some other samples earlier?

A. No. He didn't say anything to me.

Q. Did you on any other date or occasion have a conversation with the defendant subsequent to September 15, 1955? A. I did.

Q. When?

A. On Friday morning the 16th I talked to him over the telephone. He called the office twice.

Q. Did the person calling on the telephone identify [202] himself? A. He did.

Q. As who? A. As Ramsey.

Q. Approximately what time did this telephone conversation occur?

A. Well, one was in the morning and one in the afternoon. And then I had another conversation with him on Monday, in the morning.

Q. Can you recall the times of the conversations in the morning and afternoon on Friday?

A. Well, it would be between—both of them were between possibly 8:30 and 12:00 in the morn-

(Testimony of John J. Linder.)

ing; and 1:00 to 2:30, 3:00 o'clock in the afternoon on Friday; and between 9:00 and 12:00 on Monday morning.

Q. This person who called on Monday morning, did he identify himself as being the defendant?

A. He said, "This is Milton Ramsey."

And I said, "Well, I would like for you to come down. We would like to fingerprint you and photograph you."

Q. What did he say?

A. I think he said, "I am in my lawyer's office," at that time. And then in the afternoon—then he says, "Well, I'll see. I'll let you know."

Then in the afternoon he called back. Now, this conversation, [203] I think, took place on Friday in the afternoon. And I told him that I would like—and he again identified himself as Milton Ramsey, and he said, "I am sorry I didn't get to come over like you asked me to; but my lawyer told me not to, that I might open my big mouth and say something."

Mr. Bender: You may cross-examine.

Cross-Examination

By Mr. Lavine:

Q. You stayed how late, Mr. Linder?

A. Counsel, I left there between 3:30 and 4:00.

At the——

Q. And after you—pardon me. Go ahead.

A. ——request of Mr. Ramsey and his mother

(Testimony of John J. Linder.)

and his wife, I left between 3:30 and 4:00 in order to get him arraigned, because he, his mother——

Q. I just asked you the time. That was all.

A. 3:30 to 4:00.

Q. All right. Now, when you left you didn't take a couple of jugs with you that you initialed, did you? A. No, sir.

Q. And you sent somebody back later that afternoon to pick up those jugs, didn't you?

A. I did.

Q. And who was it you sent back?

A. Malcolm Warner and Jim Coughran. [204]

Q. And those two jugs were the same size as Government's Exhibits 1 and 2, isn't that right?

A. Well, let me see them. That's these gallon jugs, right?

Q. Yes.

A. With the white caps, similar to that? Yes.

Q. And they had caps on them similar to that, is that right? A. Right.

Q. You wanted those jugs because that was the only evidence that was left in that case, isn't that right? A. That is not true, counsel.

Q. Well, you knew when you sent somebody back that you didn't have any other jugs in your possession, didn't you?

A. I did not. I didn't have any in my possession at all.

Q. Well, you knew that the Government didn't have any in its possession, didn't you?

A. Yes, I did.

(Testimony of John J. Linder.)

Q. But you nevertheless sent somebody back to pick up two more jugs?

A. I sent them back to pick up the two that I had marked, because I asked Warner if he had them and he said, "I didn't. But Jones has got samples."

Q. Did he tell you that before you sent somebody back [205] to pick up those other two jugs?

The Witness: Say that again, Counsel.

Mr. Lavine: Read my question back, please.

(Question read.)

The Witness: No. I talked to Warner. Warner is the only man I had a conversation with. And in response to my question did he pick up those two jugs and mark on the caps, he told me Jones had two one-gallons in his car.

Q. (By Mr. Lavine): And you knew, didn't you, by the time you left, that everything else had been destroyed on the premises?

A. I did not.

Q. Weren't you present when the breaking up process took place? A. Partially.

Q. Well, you were there all of the time that they were breaking up the articles, weren't you?

A. No, counsel, I was not. I took Ramsey over to Torrance, and we were gone, I suppose, about 30 or 45 minutes.

Q. That was after——

A. I never made——

Q. ——all the articles were broken up, wasn't it? A. Oh, no, no.

(Testimony of John J. Linder.)

Q. Well, what time did you go over there?

A. I left with Ramsey about possibly 2:30, a quarter to [206] 3:00.

Q. Well, you never did get the two jugs with the caps on them, did you? A. No, sir.

Q. And the two jugs with the caps on them contained liquor in one jug from one barrel and liquor from another, from another barrel, is that right?

A. No, sir.

Q. Another container? What did it contain?

A. It contained liquor—or, one of them contained liquor from one of the barrels, or from the barrel, rather, the aging barrel; and one was out of a carton, a paper carton.

Q. Well now, you got very excited when you got back to your office and found that those two jugs weren't there, didn't you? A. No, sir.

Q. What time did you discover that the two jugs weren't at your office?

A. I met Warner over at our garage at 788 North Main Street and I said, "Did you get those jugs, or pick up those two jugs, one-gallon jugs that I filled with Coughran outside that room where the other whiskey was?"

And he said, "No."

I said, "Well, I poured those for samples."

He says, "Well, Jones has got samples." [207]

I knew then that there were two one-gallons missing somewhere, so naturally I sent them back out there for them.

(Testimony of John J. Linder.)

Q. You never save any more than two jugs for samples as evidence, do you?

A. Oh, yes, counsel. It's according to the way the set-up is.

Q. Well, did you see the inventory that afternoon? A. I never looked at it.

Q. When did you first look at the inventory?

A. If you show it to me now it will be the first time that I have looked at it.

Q. I see. Well, you didn't find any liquor in these automobiles, did you? A. No, sir.

Q. You nevertheless took the automobiles in, too, didn't you? A. Yes, sir.

Q. Now, how much liquid had you poured into each of these two one-gallon jugs?

A. Well, what I thought was a gallon. And I will show you about how far I poured them. That would be up to this break here, the shoulder, just at the top of the shoulder of this gallon jug.

Q. Who did you send back to pick up these two jugs that you said you had left there? [208]

A. Investigator Warner and Investigator James Coughran.

Q. What did you tell them as to where those jugs were when you sent them back?

A. I told them where I had left them; that it was right alongside that room where all the rest of these distilled spirits had been stored, on the ground.

Q. When you had left them there were there any other bottles there?

(Testimony of John J. Linder.)

A. Counsel, I don't know. I did not go back and inspect it at all.

Q. Well, when you poured the liquid you certainly saw whether there were any other bottles there, didn't you? A. I thought you——

The Witness: Restate his question, will you, please, sir?

(Question read.)

The Witness: Oh, yes. I thought you said when I left the premises were there any other bottles there. No. When I left those two one-gallon jugs there, there were quite a few of them inside the building.

Q. (By Mr. Lavine): Were they filled or were they empty?

A. Well, a few of them were filled. I don't know whether they were or not. I didn't even walk inside the place. [209]

Q. I see. And how many of them did you see were filled?

A. Counsel, I don't know. I filled two. And I don't know anything about any others except these two here; and those two that were left out there.

Q. You said you had some conversations with Mr. Ramsey after you got there? A. Yes, sir.

Q. Did you make some notes of those conversations? A. No.

Q. Did you make any notes about what you found on the premises? A. No, sir.

(Testimony of John J. Linder.)

Q. Did you make any notes of what jugs you filled? A. No.

Q. Or, if you did fill any? A. No, sir.

Q. Who did you leave on the premises at the time that you left there?

A. Now—when I left?

Q. What officers is what I am talking about.

A. What time I left there? I left there twice.

Q. I am talking about the time you finally left there.

A. Oh, well, I think Warner was there, and Travis and Awrey. Coughran was with me. He followed me downtown. And [210] I think Jones had already gone. I didn't pay much attention to who was there. Ramsey wanted to go down that night to be arraigned instead of being locked up in jail overnight, and I was accommodating him.

Q. Were these garages opened by the time you got there? A. Wide open.

Q. Now, you said you had a conversation on the telephone with somebody who gave the name of Ramsey. A. Yes, sir.

Q. And in connection with this conversation did somebody tell you you shouldn't substitute whiskey or substitute bottles of substance you know that all the bottles were broken? Was there some conversation to that effect on the phone?

A. No, sir.

Q. Didn't somebody say to you, in substance and effect "You left those bottles there, but those bottles were broken later on, and don't fake any

(Testimony of John J. Linder.)

whiskey here in the case''? Was there such a conversation on the phone?

A. No, no. That's not the conversation. I'll repeat that conversation.

Q. Well, I am asking you if there wasn't a conversation in substance and effect as to what I have stated to you?

A. No, counsel. I would like to repeat the conversation. [211]

Q. All right. Go ahead. Repeat it.

A. A man called and identified himself as Milton Ramsey.

Q. You had never heard this voice on the phone before, had you?

A. Twice before.

Q. When?

A. On Friday morning and Friday afternoon; and then on Monday morning.

Q. Outside of those times you had never heard this voice before?

A. No, sir.

Q. And you had never heard the defendant actually talk to you on the phone that you knew it was the defendant?

A. I will say it was Ramsey.

Q. Well, you say it was. But you never heard that voice before, had you, on the telephone?

A. Not before Friday morning.

Q. Was there some conversation now about the destruction of those two bottles and that there wasn't to be any faking of any evidence? Was there something said about it?

A. If you will give me the entire conversation,

(Testimony of John J. Linder.)

I will tell you the parts that I took part in, Counsel.
I would like to relate the conversation.

Q. I wasn't there. I am just——

A. I was there. I will give you the entire conversation. [212]

Q. I am asking you if there was a conversation with relation, just the substance matter now, of faking evidence in this case?

A. There was nothing. That's right. Nothing.

Q. Were you in the Alcohol Tax Unit when the two officers that you sent out there to get those two bottles returned?

A. I am still working for the Alcohol Tax Unit, Counsel.

Q. I didn't say that you weren't. Were you present on September 16th, or 15th, the night of the 15th, when Officer Warner and another officer returned and told you that they couldn't get those two jugs?

A. No. I never saw them until the next morning on the 16th.

Q. Did they report to you the next morning that they didn't get those two jugs?

A. Warner said, "We couldn't find them." Warner told me that.

Q. Have you tasted the substance of either of those two jugs?

A. No, I haven't tasted it yet. I haven't smelled it yet. And I don't believe I have ever seen these before. I wouldn't be positive.

Mr. Lavine: That is all. [213]

(Testimony of John J. Linder.)

Redirect Examination

By Mr. Bender:

Q. Mr. Linder, at the time that you obtained the second samples did you know that Investigator Jones had what is now Government's Exhibits 1 and 2 in his car? A. I did not.

Q. Would you relate in full the telephone conversation between yourself and the defendant, the one that occurred on this Monday following the day of the arrest?

A. I answered the telephone and the man said, "This is Ramsey. I would like for you to come out to my house. I want to talk to you."

And I said, "Ramsey, you come in the office and talk to me. I don't want to go out to your house."

"Well," he says, "you fellows won't be able to do anything with me because you haven't got any samples of the liquor."

And I says, "Well, don't tell me we haven't got them because we have got them."

He says, "I've got the caps that you marked while I was standing there watching you, and I have given them to my lawyer. And we know that you fellows have a hard time getting along, and I don't want to cause you any trouble, and I will be willing to plead to a lesser violation than what I am charged with if it's all right with you." [214]

And I told him it wasn't.

(Testimony of John J. Linder.)

Q. Is that all the conversation?

A. That's it.

Mr. Bender: No further questions.

Recross-Examination

By Mr. Lavine:

Q. You made some notes of this conversation?

A. No, sir.

Q. Did you take a recording of it while it was going on? A. No, sir.

Q. And all you said to him in reply was that you weren't interested in any lesser plea, isn't that right?

A. I told him that the United States Attorney handles that business; I don't. I have nothing to do with it.

Q. I see. That is all you said in that conversation in reply? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Mr. Lavine: That is all.

Mr. Bender: You may step down.

(Witness excused.)

Mr. Bender: The Government rests, your Honor.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish [215] you that you are not to discuss this case with anyone and you are not to allow anyone to discuss it with you; and you are not

to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

You may now retire to the jury room. And will you retire as quietly as possible as this court is still in session.

(Whereupon the jury retired to the jury room.)

The Court: Mr. Bender, before you rest your case I want to ask a question or two.

Count Two of the indictment says that the defendant is carrying on the business of a distiller without having given bond. Don't you think there ought to be some evidence in this case that he hasn't given bond? Are you just assuming that he hasn't given bond?

Mr. Bender: Your Honor, there is a case cited in the requested instructions to the jury, cited by the Government.

The Court: Don't you have any evidence of the fact that he hasn't given a bond?

Mr. Bender: No, your Honor.

The Court: I assume he hasn't given a bond, but——

Mr. Bender: Your Honor, in *Rossi vs. United States*, 289 U. S. 89, it holds, in substance, that in a prosecution for carrying on the business of a distiller without having given bond the defendant has a burden of showing that he [216] executed the bond. It's similar to the——

The Court: Well, I am just calling that to your

attention. You think the burden is upon the defendant?

Mr. Bender: Yes, your Honor.

The Court: Now, in Count Three you say:

“* * * business of distiller and rectifier * * *”

and

“* * * did fail and refuse to give notice thereof as required by United States Code.”

Now, is the burden upon the defendant to prove that he gave the notice?

Mr. Bender: Yes, your Honor. I have not yet had the opportunity to look for a case, but the burden in this type of thing is on the defendant because it is an item peculiarly within the knowledge of the defendant, easily to be disproved, or easily to be proved if given notice, if in fact he did. It is analogous to the situation concerning whether the defendant paid the special tax.

The Court: The burden is then upon the defendant to establish that he paid? All you have to do is allege he didn't pay?

Mr. Bender: That's right, your Honor. The case on that is *Faraone vs. United States*, 259 Fd. 507. And, also, we would like to refer your Honor to Title 26 of the United States Code, Section 5649, which concerns the burden of proof in [217] cases of seizure of spirits. It is in accordance with the order in the *Faraone* case.

The Court: Count Six alleges that he did remove approximately 40 gallons of distilled spirits to a place other than the Internal Revenue bonded

warehouse. Assuming that the distilled spirits were made upon the premises, where was it removed to?

Mr. Bender: Out of the still into the jug. It's like the old case, your Honor—I don't recall the citation—where a person——

The Court: You mean removal from the still to the jug?

Mr. Bender: Yes, your Honor, like larceny of a cow. It was standing up and an individual came along and killed it, and it was held that just causing it to fall was sufficient removal for it to have been larceny.

The Court: Where is your authority, besides Bender?

Mr. Bender: I am sorry, your Honor. I don't have a case on that. There are a few aspects of this case which I have not researched, and that is one of them.

After all, a transportation, by the very definition of the word, doesn't require that it be transported any particular distance. If it were transported a foot——

The Court: That is true. But if it is distilled and placed in the barrel and jugs right there where is it removed to? [218]

Mr. Bender: It is removed from the still into the jug, your Honor. It had to be moved a few feet.

The Court: Tonight you had better get some cases on it.

All right, Mr. Lavine. You want to say something. I will hear you.

Mr. Lavine: Well, the court is so correct I

don't know what I can add. I don't want to get into an argument with the court when the court has the point of view that I think is correct.

Insofar as Section——

The Court: Well, before you start arguing you better make a motion. There is nothing before the court.

Mr. Lavine: Yes, I am going to make a motion. But your Honor has made some points to the Government, and it was with reference to those points that I am about to address myself.

Now, insofar as Section 5649 is concerned, which shifts the burden of proof, or attempts to shift the burden of proof to the defendant, it is the defendant's position that is unconstitutional and in violation of the Fifth Amendment to the Constitution of the United States. And I will cite some cases if your Honor wants to look at them. But I want to make my point in that respect.

The Court: Have you got a case which says that that particular statute is unconstitutional?

Mr. Lavine: No. But by analogy on the principle of [219] shifting the burden of proof on criminal cases to a defendant. There are cases on that point.

Now, at this time I wish to move for a judgment of acquittal as to each of the counts as specified in the indictment. The Government has conceded as to Count One.

The Court: I will grant the motion as to Count One.

Mr. Lavine: Now, as to the other counts, if the

court please, we urge a judgment of acquittal as to each of the counts, first on the grounds of the insufficiency of the evidence, all of which your Honor has heard; and on the further ground that insofar as the burden of proof is concerned under Section 5649, there being no evidence on the particular issues which your Honor has called to the Government's attention here, the evidence is insufficient to establish those particular counts.

And as to Section 5649 of Title 26, where it attempts to shift the burden of proof, there is an unreasonable relationship between the attempt to shift the burden of proof and the shifting thereof to the defendant on any grounds whatsoever.

In the case of *Morrison vs. California*, one of the leading cases—it's an alien land law case, in which the United States Supreme Court went into the details of the unconstitutionality of a statute of shifting the burden of proof to a defendant. I haven't got the citation here. [220]

The Court: I am not interested in theories. If any court has held that statute to be unconstitutional I will follow it. If it hasn't, I won't. Because many, many of these cases have been tried and have been affirmed on appeal. Now, if you have got a circuit court case in which it says that that statute is unconstitutional, I will be glad to follow it.

Mr. Lavine: No, your Honor, I have none as to this particular statute. I can only protect my record by making the motion and specifying the

grounds and calling your Honor's attention to the applicable law, aided by analogy or otherwise.

The Court: Have you specified all your grounds?

Mr. Lavine: No, your Honor. I also move to dismiss the indictment, and for judgment of acquittal, on the ground that the evidence in this case was unlawfully searched and seized in violation of the Fourth and Fifth Amendments of the Constitution of the United States. And in that respect the search warrant, although specifying "premises," is required under Rule 41(e) to specify with particularity the particular part of the premises which is to be searched. And in this case there was no specifications of any garage or garages or outhouses or any other place other than two houses, which the evidence in this case shows that the officers went to specifically. And, therefore, any search outside of those [221] for any purpose, whether it was for the distilled spirits or for any of the other things which they found, was beyond the scope of the search warrant.

Also, that even within the four corners of the search warrant the search was beyond its specific designation and specific scope; and therefore, the indictment, being in violation thereof of all the evidence in respect thereto, was in violation thereof and the case should be dismissed on that ground.

And with respect to that motion I also wish to move to strike from the evidence all of the exhibits of articles taken from the premises, or purportedly taken from the premises, as having been illegally searched and seized, and therefore in violation of

the Fourth and Fifth Amendments and Rule 41 of the Rules of Criminal Procedure, Federal Rules of Criminal Procedure for the District Courts of the United States.

And I also wish to move to strike all of the photographs, which is secondary evidence of articles which were destroyed after being seized in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

The Court: Your motion to strike is denied. And your second motion was made upon the question of unlawful search and seizure.

Mr. Lavine: Yes, sir. [222]

The Court: That is denied.

Your first motion, under Rule 29(b), I am going to take it under submission. I don't know whether to submit the matter to the jury. And I will hold in abeyance my decision on the first motion.

I am granting the motion only to Count One and I am taking the matter under submission as to the other counts on the first reasoning as given by Mr. Lavine. And the other two reasons he gives, I have denied.

The court will now stand in recess until 20 minutes after 3:00.

(Short recess.)

(Other court matters.)

The Court: Is it stipulated that the jury is present and in the box?

Mr. Bender: So stipulated. And the defendant is present in court.

Mr. Lavine: So stipulated, your Honor.

MARVIN W. REEVES

called as a witness on behalf of the defendant, being first sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: Marvin W. Reeves, R-e-e-v-e-s.

Direct Examination

By Mr. Lavine:

Q. Mr. Reeves, what is your occupation?

A. I am a longshoreman.

Q. Where do you reside?

A. At 363-A West 227th Street in Torrance.

Q. On September 15, 1955, did you have occasion to go to an address on West 223rd Street in Torrance?

A. I did.

Q. At 1011, 1011½?

A. Yes, sir.

Q. And did you have occasion to go to the back of that place on that date?

A. I did.

Q. What was the occasion of your having gone to that house?

A. The occasion was to help clean up.

Q. And did you go to the back of the house to clean up?

A. Yes, sir.

Q. And when you went back there did you find a number of broken bottles?

A. I did.

Q. Now, did you find in addition to the broken bottles any bottles that contained any liquid?

A. I did. [224]

Q. And how many bottles did you find there containing any liquid?

A. Two.

Q. And what was the color of those two bottles?

(Testimony of Marvin W. Reeves.)

A. Well, they were brownish liquid.

Q. Did they both appear to be the same color?

A. One was darker than the other.

Q. In comparison to those two bottles on the table, did they resemble the bottles on the table? Did the bottles themselves resemble those two bottles on the table? A. Yes.

Q. What did the contents resemble?

A. Well, they were darker than this. One was much darker.

Q. And what did you do with the bottles?

A. I went in and asked my mother-in-law——

Q. No, just what you did with the bottles now?

A. Oh. I took them and threw them in with the other pile of glass.

Q. And then did you remove the glass somewhere? Did you put the glass in some box or container to be removed from the premises?

A. No, not at that time, no, sir.

Q. Well, did you later go to the place where you had piled all this glass, including these two bottles, with the [225] defendant Milton Grady Ramsey?

A. Yes, sir.

Q. And what did you or he do there at that time?

A. Well, I showed him these two that I'd thrown out there. They were marked.

Q. And were they empty at that time?

A. They were broken.

Q. Was anything removed from those two bottles? A. No. They were broken.

(Testimony of Marvin W. Reeves.)

Q. Well, was anything removed from the tops of the two bottles? A. The two caps.

Q. I show you now two caps and ask you if you saw those before?

A. Yes. These are the two caps that I threw out with the jugs.

Mr. Lavine: I now offer these two caps in evidence as Defendant's Exhibits next in order.

Mr. Bender: May the Government see them?

Mr. Lavine: Surely.

(Whereupon the articles were handed to counsel.)

The Court: They will be received in evidence.

The Clerk: Defendant's Exhibits B and C in evidence.

(The exhibits referred to were marked Defendant's Exhibits B and C and received in evidence.) [226]

Mr. Lavine: You may cross-examine.

Cross-Examination

By Mr. Bender:

Q. What time was it when you found the two jugs? A. Approximately 4:30.

Q. When you found them were they broken?

A. No, sir.

Q. What did you do with them after you found them?

A. I went in and asked my mother-in-law——

Q. Not what you asked——

A. ——the reason for them being out there.

Mr. Bender: If the court please, of course the witness is not permitted to testify to hearsay.

The Court: It may go out.

Q. (By Mr. Bender): What did you do?

Mr. Lavine: He testified what he did.

Q. (By Mr. Bender): Well, you had a conversation with your mother-in-law?

A. Yes. I then went back out and threw them in with the pile of glass that was there.

Q. And who is your mother-in-law?

A. My mother-in-law?

Q. Yes. A. Mae Ramsey.

Q. What is your relationship to this [227] defendant? A. Brother-in-law.

Q. Were they one-gallon jugs that you found?

A. Yes.

Q. Did they have any markings on the glass?

A. I didn't examine the glass.

Q. You say you broke them? A. Yes, sir.

Q. What did you break them with?

A. Threw them up in the air.

Q. Was the defendant present when you broke them? A. No, sir.

Q. Was Mr. Warner present at this time?

A. No, sir.

Q. Who was present?

A. Mr. Leslie Fassenfelt.

Q. How do you spell his last name?

A. F-a-s-s-e-n-f-e-l-t.

Mr. Bender: No further questions.

Mr. Lavine: That is all. Thank you.

The Court: You may step down.

(Witness excused.)

Mr. Lavine: I will recall Mr. Linder. [228]

JOHN J. LINDER

a witness called on behalf of the defendant, having been previously sworn, resumed the stand and testified as follows:

Direct Examination

By Mr. Lavine:

Q. Are these the two caps that you marked, Mr. Linder? I am referring now to Defendant's Exhibits B and C? A. They are.

Mr. Lavine: I have no further questions. You may cross-examine.

Mr. Bender: We have no questions.

The Court: Step down.

(Witness excused.)

Mr. Lavine: Mr. Drew.

EDWARD F. DREW

called as a witness on behalf of the defendant, being first sworn, was examined and testified as follows:

The Clerk: State your name in full.

The Witness: Edward F. Drew.

Direct Examination

By Mr. Lavine:

Q. What is your official position, Mr. Drew?

A. Chief deputy clerk for the United States District Court, Southern District of California.

Q. In connection with the case of the United States [229] against Milton Grady Ramsey have you made a search for the search warrant and the return and any documents that were on it, the inventory that was filed with the court?

A. I have made a search for that search warrant, yes.

Q. And for the other documents that were filed, the return? Have you had a search made by your deputies?

A. I was only requested to search for the search warrant. I wasn't aware that there were other documents.

Q. Did you find the search warrant?

A. I did not.

Q. Did you see any return or any part of any return to the search warrant in any files in the clerk's office? A. I did not.

Q. You made that search at my request, did you not? A. I did.

Mr. Lavine: You may cross-examine.

(Testimony of Edward F. Drew.)

Cross-Examination

By Mr. Bender:

Q. When did you make the search?

A. Yesterday morning.

Q. And where would these documents normally be?

A. Normally they would be in our search warrant file or attached to the Commissioner's transcript, after his return to us by the United States Commissioner.

Q. Do you know where they are? [230]

A. I do not. That is, the search warrant. I do not know where that is. I know where the Commissioner's transcript is. That is in the file.

Mr. Bender: No further questions.

The Court: You may step down.

Mr. Lavine: Thank you, Mr. Drew.

(Witness excused.)

Mr. Lavine: The defendant rests.

Mr. Bender: May I have a moment, your Honor?

The Court: Yes.

Mr. Bender: Your Honor, the Government requests approximately a five-minute continuance in order to obtain Commissioner Hocke concerning the search warrant. We didn't know that there would be this testimony.

The Court: Well, what difference does it make? You stipulated you could use the copy that was

here and admitted to be the copy. What difference does it make?

Mr. Bender: Only the inference, your Honor, that is apparently made.

The Court: Mr. Drew said he checked with the Commissioner's file, didn't he?

Mr. Bender: He said he searched for the search warrant but didn't find it. He searched the clerk's office.

Excuse me one moment, please.

The Court: Where are the search warrants usually [231] returned? Are they returned to the clerk's office or the Commissioner's office?

Mr. Bender: I don't know. I have never had an opportunity to pursue them. It's only to explain to the jury what has happened to it, if there is an explanation.

The Court: Well, does it make any difference? You have been using the copy.

Mr. Bender: Yes, your Honor. The copy is in evidence. The Government has no rebuttal testimony.

The Court: Not only that, but I believe the defendant put it in evidence.

Mr. Bender: Yes.

Mr. Lavine: That is correct, your Honor. We couldn't find the original. We put the copy in evidence.

The Court: What difference does it make whether he had the original or the copy?

Mr. Lavine: Well, we tried to find the docu-

ments, your Honor. We haven't. That is why we produced the copy.

Mr. Bender: The Government has no rebuttal testimony, your Honor.

Mr. Lavine: I think it is time to take up the question of instructions and other motions, your Honor.

The Court: Yes, you might as well approach the bench.

(Whereupon the following proceedings were had outside the hearing of the jury and the defendant:) [232]

Mr. Lavine: At this time the defendant again renews his motion made at the close of the Government's case to dismiss the case on each of the counts specified for insufficiency of the evidence to prove the offenses charged, and also moves to dismiss the indictment and dismiss each of the counts of the information for violations of the Fourth and Fifth Amendments to the Constitution of the United States, and Rule 41 of the Rules of the District Court of the United States, Federal Rules of Criminal Procedure for the District Courts of the United States; and also moves to strike all of the evidence heretofore specified in connection with the illegal search and seizure in three out-buildings which were not a part of the address or addresses specified in the search warrant.

And I incorporate by reference all the other motions to strike other matters that are fully set forth. And may it be considered that the court consider

them as fully repeated at this time. Will you stipulate that it may be deemed that the court consider all the motions made at the close of the Government's case as repeated at this time?

Mr. Bender: So stipulated.

The Court: I will make the same ruling as made before, denying it upon the last two grounds and taking the first ground under submission.

(Whereupon the following proceedings were had in the [233] hearing and presence of the jury and the defendant:)

The Court: Mr. Bender, I would like you to make your opening statement at this time. Is 30 minutes for each side sufficient?

Mr. Lavine: If we can't say it in 30 minutes, we can't say it at all.

Mr. Bender: I didn't anticipate arguing it at this time.

The Court: You know what the facts are and you can state the facts to the jury, can't you?

Mr. Bender: Surely.

(Whereupon counsel for the Government made his opening argument to the jury.) [234]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 13th day of March, A.D. 1956.

/s/ DON P. CRAM,

Official Reporter.

[Endorsed]: Filed March 29, 1956.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 30, inclusive, contain the original

Indictment;

Motion to Suppress Evidence and Dismiss Case;

Verdict;

Motion for Judgment of Acquittal or in the Alternative for a New Trial;

Notice of Appeal;

Praecipe;

Affidavit for Enlargement of Time for Filing and Docketing Record on Appeal:

which, together with a full, true and correct copy of the Minutes of Arraignment and Plea, Minutes of

the Court for December 20, 1955; December 21, 1955; December 22, 1955; January 16, 1956; and 2 volumes of reporter's transcript of proceedings, all in the above-entitled cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in said case.

I further certify that my fees for preparing the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of said District Court this 20th day of March, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk.

By /s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No 15094. United States Court of Appeals for the Ninth Circuit. Milton Grady Ramsey, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: March 26, 1956.

Docketed: April 9, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15094

MILTON GRADY RAMSEY,

Defendant and Appellant,

vs.

UNITED STATES OF AMERICA,

Plaintiff and Respondent.

DESIGNATION OF POINTS ON APPEAL

Comes Now Milton Grady Ramsey and designates the points upon which he intends to rely upon appeal:

I.

The evidence is insufficient to justify the verdicts. The verdicts are contrary to the law and the evidence.

II.

The Court should have granted the motions for judgments of acquittal on each of the counts in the indictment.

III.

Evidence was illegally searched and seized in violation of the Fourth and Fifth Amendments of the Constitution of the United States, and searched and seized evidence was illegally admitted as evidence in the trial of the case.

IV.

The search warrant and the return was not the property described in the search warrant.

V.

Section 5649, Title 26 of the U. S. Codes is unconstitutional as attempting to shift the burden of proof in a criminal case to the defendant; that will violate the Fifth Amendment to the Constitution of the United States.

VI.

Evidence regarding a "still" not specified in any search warrant was illegally admitted. The Court erred in admitting secondary evidence or photographs of articles which were destroyed by the Government after being seized in violation of the Fourth and Fifth Amendments to the Constitution of the United States. The Court erred in denying the Motions to Strike the same. The Court erred in admitting evidence seized in three outbuildings which were not a part of the address or addresses specified in the search warrants.

VII.

The Court erred in instructions given and refused.

VIII.

The Court erred in the admission and exclusion of evidence in the trial of the case.

IX.

The Court erred in its definition of what constituted the "business of a distillery" on the date in question.

X.

The Court erred in admitting evidence regarding an unconnected apparatus which was called a "still."

/s/ MORRIS LAVINE,

Attorney for Appellant.

[Endorsed]: Filed June 20, 1956.

